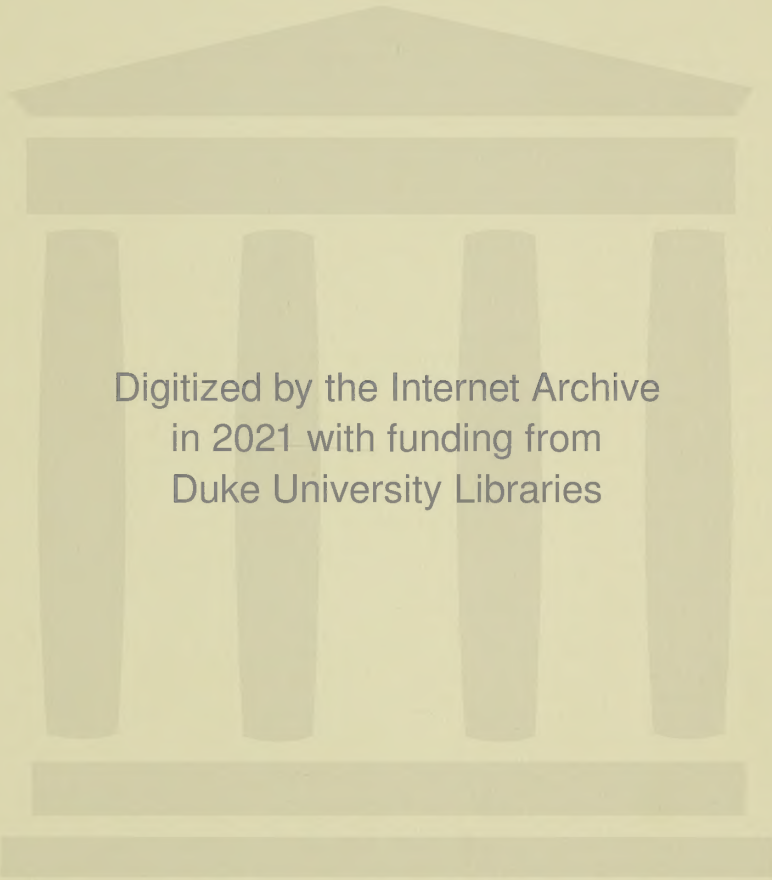


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SOVIET PUBLIC INTERNATIONAL LAW

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SOVIET PUBLIC
INTERNATIONAL LAW

DOCTRINES
AND DIPLOMATIC PRACTICE

by

KAZIMIERZ GRZYBOWSKI

A.W. SIJTHOFF
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PREFACE

A third of a century has elapsed since Taracouzio's "Soviet Union and International Law" (1935) made its appearance. In that period the position of the Soviet Union and its participation in the formulation of the principles and rules of the international legal order have changed fundamentally. A number of important and very valuable contributions to the study of Soviet international law from the pen of Western jurists were published in that period. However, Taracouzio's study has remained the only comprehensive treatment in this field.

The study of Soviet international law is important for two reasons. First, the Soviet position on various issues is taken with reference to the principles and rules of the general system of international law. Second, it is also important to determine the working of its institutions in the life of the international community, as Soviet foreign policy represents a documented exposition of limitations imposed by Soviet power on the operation of traditional rules of international law.

The scholarly community in the United States seems to recognize the need for the study of Soviet practice and theory of international law. At the same time, however, there is little comprehension of the special problems connected with the research of Soviet affairs in this area.

There is a small band of scholars who, with great insight, insist on the analysis of the function of the rule of law in terms of policies shaping the life of the international community. The majority, in contrast to the modern trend of legal study in other areas of legal ordering (primarily in public domestic law as it affects property and contractual relations) has little concern with those forces which affect the interpretation and context of the role of law in international relations. They are engaged in a highly formalized study of various legal documents: treaties, decisions of international tribunals, charters and statutes of international organizations. They pay little attention to those aspects of international relations which determine the shape of the international community: interests of individual powers, or groups of powers, technical advances and emergence of the industrial economies, which affect the balance of forces and add weight to claims and demands of some members of the international community.

Another reservation which needs to be made is that the present book is not the study of Soviet theories of international law with reference to teachings of Marxism-Leninism. These theories are reviewed and confronted with Soviet diplomatic practice. Their importance as an extension of the dialectical method, or of the materialistic interpretation of history, is outside

the scope of this book. The general effect of this approach is that frequently doctrines formulated by Soviet scholars, which may be important in terms of the theoretical foundations of Marxism-Leninism, are shown to be irrelevant for the understanding of Soviet diplomatic practice.

It is hoped that this book will demonstrate that Soviet international law belongs to the mainstream of international legal studies. It is true that owing to Soviet hostility toward adjudication as a method for resolution of international disputes, a formalized study of Soviet international law is not possible, and that foreign policy is the main source of information for research in that area. At the same time it is suggested that greater concern with international policies of the more important members of the international community, to the extent that they concern the use of international law and its role in the working of international public order, is indispensable.

This does not mean that international law should be identified with foreign policy. International law studies must always be concerned with the content and systematic arrangement of its rules, principles and institutions. And yet only a thorough analysis of diplomatic practice and foreign policy may inform the reader of the real role of the legal rule in ordering international relations, and suggest the reasonable degree to which a rule, principle or institution of international law may be expected to determine the behavior of states and governments in similar situations in future.

It is my pleasant duty to thank all those who made this book possible. My thanks are due in the first place to the Carnegie Corporation, to Duke University Council on Research and to the Rule of Law Research Center for financial assistance and free time for research and writing. A special tribute goes to Dr. Arthur Larson, Director of the Center, for his active interest in this undertaking. The Law Library of the Library of Congress and my former colleagues there deserve recognition for their help, advice and kind assistance in the use of its priceless collections. My dear friend and associate from the Center John Halderman read conscientiously the entire manuscript offering numerous suggestions which improved its readability and context. Finally, my thanks goes to the secretaries of the Center, who have typed the manuscript, proofread and prepared it for printing.

The present work relies on earlier studies, and the footnotes to the text record whenever possible my debt to other scholars. I would also like to record my debt to two distinguished jurists, legal historians and professors of international law who have introduced me into its study. Ludwik Ehrlich of the University of Lwow and lately of the ancient Jagellonian Academy of Cracow and Manley O. Hudson of the Harvard Law School—both no longer among us—have earned my lasting gratitude.

Durham, November, 1969.

ABBREVIATIONS

AJIL	<i>American Journal of International Law</i>
Cal.	<i>A Calendar of Soviet Treaties 1917-1957</i> (1959)
Dok.	Ministerstvo inostrannykh del SSSR, vol. i-(1957). <i>Dokumenty vneshnei politiki</i> (Ministry of Foreign Affairs of the USSR Documents of foreign policy)
DU	<i>Dziennik Ustaw</i> (Polish Official Law Gazette) 1920-
ICJ Rep.	International Court of Justice, <i>Reports</i> , 1949-
ILC	International Law Commission, <i>Reports</i> , 1949-
Lenin, Soch.	Lenin — <i>Sochineniia</i> (4th ed) (1940-60)
MEO	Akademia Nauk SSSR, Institut Mirovoi Ekonomiki i Mezhdunarodnikh Otnoshenii, <i>Mezhdunarodnye Ekonomicheskie Organizatsii</i> (2nd ed. 1962) (Academy of Science of the USSR, Institute of World Economy and International Relations, International Economic Organi- zations)
NYT	<i>New York Times</i>
RCADI	<i>Recueil des Cours d'Academie de Droit International à la Haye</i>
RGDIP	<i>Revue général de droit international public</i>
Sbirka	<i>Sbirka Zakonu Republiki Ceskoslovenske</i> (Collection of Laws of the Czechoslovak Republic) 1918-
SDD	Ministerstvo inostrannykh Del, <i>Sbornik deistvuiushchikh dogovorov, soglashenii i konventsii zakliuchonnykh SSSR s inostrannymi gosudarstvami</i> 1924- (Ministry of Foreign Affairs, Collection of Treaties, Agreements and Conventions in Force Concluded by the SSSR with Foreign Countries.)
SDD RSFSR	<i>Sbornik deistvuiushchikh dogovorov, soglashenii i konventsii, zakluchennykh RSFSR s inostrannymi gosudarstvami</i> (Collection of Treaties of the RSFSR) 1921-23
SDDtD	<i>Sbornik deistvuiushchikh torgovykh dogovorov i innykh khoziaistvennykh soglashenii SSSR, zakluczennykh s inostrannymi gosudarstvami</i> (Collection of commercial agreements of the USSR) 1935-36
SEMP	<i>Sovetski ezhegodnik mezhdunarodnogo Prava</i> (Soviet Year- book of International Law)

SG	<i>Sovetskoe Gosudarstvo</i> (Soviet State)
SGP	<i>Sovetskoe Gosudarstvo i Pravo</i> (Soviet State and Law)
Sots. Zak.	<i>Sotsialisticheskaia Zakonnost</i>
Stalin, Soch.	<i>Sochineniia</i> (Works) 1946-
STM	<i>Sbornik mezhdunarodnikh konventsii, dogovorov, soglashenii i pravil po voprosam torgovogo moreplavania</i> (1959) (Collection of International Conventions, Treaties, Agreements and Regulations on Maritime Trade)
SU RSFSR	<i>Sobranie uzakoneniii i rasporiazheni raboche-krestianskogo pravitelstva RSFSR 1917-</i> (Collection of Laws and Decrees of the Worker-Peasant Government RSFSR 1917-)
SZ	<i>Sobranie zakonov i rasporiazhenii Raboche-Krestianskogo Pravitelstva SSSR 1923-37</i> , Otd. I, Otd. II. (Journal of Laws of the USSR, Sec. I, Sec. II) 1924-37.
UNTS	<i>United Nations Treaty Series</i>
Ved.	<i>Vedomosti Verkhovnogo Soveta SSSR</i> (Bulletin of the Supreme Soviet of the USSR) 1938-
Vestnik VCIK	<i>Vestnik Tsentralnogo Iсполnitelnogo Komiteta, Soveta Narodnikh Kommissarov i Soveta Truda i Oborony SSSR; Postanovlenia i rasporiazhenia rabocheho i krestianskogo pravitelstva SSSR</i> (1923-24) <i>Sobranie postanovlenii Pravitelstva SSSR</i> (1924-) (Official Gazette USSR)
VPSS	<i>Vneshnaia politika SSSR, Sbornik Dokumentov</i> 1) (Foreign Policy of the USSR, Collection of Documents) vols 1- 2) <i>V period otechestvennoi voiny</i> (in the period of the Patriotic War) vols 1-3 3) years 1945-1950
VT	<i>Vneshnaia Torgovla</i>

Chapter I

SOVIET SCIENCE OF INTERNATIONAL LAW: ITS HISTORY AND BASIC DOCTRINES

I. HISTORY OF SOVIET SCIENCE OF INTERNATIONAL LAW

A. The Beginnings

The science of international law has a long tradition in Russia. According to a Soviet legal historian, the beginnings of Russian scholarly study of international law may be traced back to the middle of the seventeenth century. However well-founded are Russian claims in this respect, it is also true that the real flowering of legal studies in Russia came much later. It was only in the course of the nineteenth century that Russian legal studies reached proportions comparable with similar activities in the other European countries.

The study of international law came to Russia from Western Europe and was a part of the effort to make Russia a modern civilized country. Discounting somewhat legendary beginnings of the pre-Petrovian period, the science of international law in Russia goes back to the Academy of Science founded by Peter the Great in 1725, where imported German scholars began to study international law to teach its theory and doctrine and to discuss the diplomatic practice of the Western world. It was understandable, therefore, that for some time Russian scholars in the international law field followed faithfully the teachings of their masters in Western Europe, particularly in Germany. For quite some time instruction of international law was mainly based upon translations of the works of foreign authors. In the beginning, the German school of natural law (Wolff and Pufendorf) was dominant. Later, the German historical school and, still later, German positivism exercised successive predominance.

The influence of German scholarship on Russian legal thought was further strengthened by the fact that one of the leading and flourishing universities in Russia was the German University of Dorpat, where German professors taught international law and as a result influenced its study in other provinces of Russia. Bulmerinck, Bergbohm, Martens, von Taube, Nolde and Holtzendorff not only lectured in the German language, but their doctrines of international law were essentially German.

The period of imitation, however, could not last indefinitely. Eventually, Slavic scholars began the serious study of international law. By the middle of

the nineteenth century Russian scholars began to dominate legal studies in Russia. Until the early part of the twentieth century Russian international law literature, despite the growing number of Russian treatises and monographs, had to rely upon translations from other languages. This was due not only to the fact that it was the most effective technique for filling the existing gaps, but also because international law was considered a part of Western civilization, and imports from the West were the surest method of achieving Western standards.

The October Revolution of 1917 set up a new framework for the development of international studies in Russia. A considerable number of Russian scholars rejected the new regime and went into exile. None of the older scholars of German origin or extraction remained in Russia; and, of those born abroad, only professor Hrabar (born in Vienna and a refugee from the Austro-Hungarian empire) continued in his post at the University of Kiev. However, at the time of the revolution, an entirely new generation of Russian scholars, trained and active in the field of international law, was available to meet the needs of the new political regime for work at the universities, government posts and as experts to assist the Soviet government in reestablishing relations with the outside world.

The work of Soviet scholars was seriously jeopardized by the chaos of the civil war, so-called foreign intervention and the military efforts of the Soviet regime to reestablish the frontiers of the former Russian empire. However, the period of the War Communism came to an end and peace treaties with neighboring countries were made. The return to normalcy opened a vast field of activity for Soviet international jurists. After a period of indifference and even hostility toward the legal profession and legal studies, the need for law and its scientific study was discovered. An encouragement to engage again in the study of law in general and of international law in particular came from the highest levels of government.

Moreover, this realization that internal and external legal rules were needed was strengthened by the convening of the Geneva Economic Conference in May 1922, to debate the economic reconstruction of Europe, including Russia. In May of the same year appeared the first issue of the *Sovietskoe Gosudarstvo* published by the Law Institute organized in 1920. In a lengthy introduction the Commissar of Justice, Kurskii, outlined the task of the new periodical and of the legal profession. He insisted that the purpose of the new periodical and indeed of legal research in Russia, was to develop Soviet law through the study of its problems in theory as well as practice. As the Soviet regime had achieved a degree of stability, the assessment of what had been achieved and a generalization of the norms of the new legal order had become possible. Furthermore, Kurskii said, there was a direct relationship between the internal and international policies of the regime and this same rationale applied to international law. The material for the generalization of the international law rules was to be found in Soviet treaties with the capitalist countries.

The other subject deserving attention from the Russian scientific community was federalism as it developed within the Russian Federated Republic. The purpose of such a study was to establish new elements in this field as introduced by Soviet Constitutionalism.¹

B. Periodization

When analyzing the development of legal thought in the Soviet Union a distinction must be made between two major factors that have influenced Soviet legal doctrine. The first and most salient is the political content and practical bent of scholarly effort. The second and more pervasive is the parallelism of Soviet juristic thinking; that is to say, the traditionalist and Marxist trends. Both influences are constant in the sense that political events calling for changes in Soviet foreign policy influenced the formulation of doctrines of Soviet international law, and that, depending upon the political situation, doctrines of scholars would emphasize traditionalist or Marxist formulations. Although at various times either the traditionalist or Marxist interpretation of international law principles is dominant, they coexist and are always present in the Soviet juridical thought.

There is a general agreement among Western students of Soviet international law that the history of this law falls into four main periods: the first ends in 1930; the second terminates with Vyshinski's theses of 1938; the third covers the period of what may be called Stalinist international law, until 1955; and the fourth, beginning in 1955, is the period of the evolution towards a new understanding not only of the role of the Soviet Union in the international community but also of the role and structure of international law in the modern international community.²

The guiding principle of this periodization is seen in the person of Stalin and his role as the architect of Soviet internal and international policies. Stalin's policy of long-term economic development plans was the signal that he had emerged as the undisputed leader in the struggle for power, and that his victory called for a reappraisal of the Soviet Union's position in international relations. The period of 1930-1938, as reflected in the area of legal theory, denoted a quest for stability in international relations in order to achieve a breathing spell and also to employ all available resources for the internal reconstruction of the Soviet Union. It led to Vyshinski's theses in 1938, which influenced Soviet juristic thinking in the field of international law well into the post-Stalinist era. During the third period Soviet doctrines of international law had to take into account the forces of international change unleashed by the war (1939) which finally ended in a general confrontation of the Axis powers with the Grand Alliance of the Western democracies. The Soviet Union's joining of the democratic camp was the result of an event that was not in the book of Soviet foreign policy—a policy of noninvolvement. The fourth period followed the death of Stalin

and was caused by a fundamental change in Soviet policies. This change gradually shaped the future of international law and diplomacy. The system of two superpowers came into being. On the Soviet side the international system of socialist states was established. The socialist camp was neither as monolithic nor as stable as Soviet leadership had hoped it would be. Winds of change were variable and at times the Soviet leadership was challenged both from within and outside the socialist system. The post-Stalin era brought to the surface latent opposition to Soviet overlordship in the Eastern bloc. The Soviet Union was forced to adopt the posture of a status quo power seeking stability both within the socialist bloc as well as within the world at large.

C. The Marxist Trend

1. Early Theories

First Marxist interpretations of international law are inseparably bound with the names of two Soviet scholars: Pashukanis and Korovin. They both realized that the overthrow of the bourgeois state would not end the rule of law in the revolutionary society and in its relations with the outside world. It would take time for the new techniques of the management of the means of production to evolve. It would also require a radical transformation of the international community before international law was replaced by a new method of international cooperation. In the words of Pashukanis:

“As state enterprises are subordinate to the condition of the turnover, the bond between them is molded in the form of arrangements and the form of technical subordination. Accordingly, the purely juridical—that is to say, legal—form of regulating relations becomes possible and necessary.”

Law and the state would disappear gradually when other techniques of the management of productive processes were perfected. These new techniques, argued Pashukanis, would be based on a new type of regulation, i.e., administrative regulation, leading finally to a total disappearance of the legal rule and the state, and to the emergence of the new economic order.³

In 1923 Korovin's essay “The International Law of the Period of Transition” appeared. He advanced similar theories with regard to the structure and function of international law following the Bolshevik Revolution. The Soviet state, Korovin asserted, was constrained to live surrounded by the capitalist states until the time when successive revolutions in major industrial states would transform the community of nations into a community of socialist states. The necessity to last through this period results in a specific system of rules applicable to legal relations between the Soviet state and the imperialist world.

Korovin compared international law of the period of transition with other systems of international law, such as the Anglo-American doctrine of

international law and the continental European system of international law. International law of the period of transition was a legal system in force between the states with different social and economic orders. It was essentially a compromise law, which applied to international relations of the Soviet Union until the victory of the revolution on the world scale and its replacement by the inter-Soviet law. Its scope was limited exclusively to economic and technical cooperation, essential for the existence of the international social order, while political and cultural cooperation were excluded from its regulation.⁴

Korovin's essay in 1923 was followed by his book, *Contemporary Public International Law*, which purported to be a systematic application of his theories to all main aspects of international law. International law was according to Korovin, "the totality of legal rules, presently in force, which determine the rights and obligations of the collectives of the ruling classes in their capacity as participants in international relations."⁵

Thus the real subjects of international law and members of the international community were the ruling classes. Also as partners in international relations and members of the international community were international organizations of the working class, such as the trade unions, international organizations of the Communist International (Comintern), nations which had not yet established their states, wandering tribes, savage nations and trading companies (organizations of the financial capital) which had exercised territorial power and were active in international relations.

According to Korovin, Soviet diplomats represented not so much the Soviet state or even the working class, but the ruling part of the proletariat, i.e., the Communist Party—a view which he later abandoned.

Pashukanis, in addition to his general formulation of the nature and function of law during the period of transition from the revolution to the emergence of the truly socialist system of social order, wrote an article on international law which appeared in the "Encyclopedia on State and Law."⁶ As civil law was the product of the capitalist social order, he wrote, so international law was the product of the capitalist rule over the proletariat and over colonial countries. The international community of the capitalist period was a system of competing trusts, and their relations were under the rule of international law.

With the appearance of the Soviet state, Pashukanis asserted, international law became a system of compromises not only between capitalist trusts, but also between two antagonistic class systems. These compromises were concluded to last until the moment when the socialist system would be able to establish its exclusive rule on the world scale. In this sense one could speak of international law during the period of transition. During this period open struggle for annihilation would be replaced by the struggle within the framework of diplomatic intercourse and treaty relations. Moreover, international law was an interclass law and would continue in force as long as the interclass system of international relations was in existence.

It must be noted at this stage that both Korovin and Pashukanis shared the view that a socialist state may be served by legal institutions which are characteristic of the capitalist system. The nature and extent of international law at the time of transition was dictated not so much by the fundamentals of social and economic order within the Soviet Union as by the nature and extent of Soviet relations with other states which were of course more restricted than relations between capitalist countries.

The first criticism of Korovin-Pashukanis theories was made by Soviet jurists who adhered to the traditionalist doctrine of international law.

Professor Sabanin of Moscow University, later chief of the legal department of the Commissariat for Foreign Affairs, declared that a system of international law as conceived by Korovin was a legal impossibility. The existence of international law did not, he contended, depend on the judgment of one state alone, but rather on the recognition of its principles and rules by all states. Sabanin had consistently held the view that it was not the task of a socialist state to create a new and different system of international law, but rather to improve the rules of the existing legal system.⁷

Professor Hrabar was dubious of the usefulness of a special and separate system of Soviet international law. In addition, he held the view that there was an insufficient number of rules which could be drawn from Soviet treaty practice to develop such a separate legal system during the period of transition. Such a system, he maintained, could not be likened to a regional system of the rules of international law as could be seen in relations between various states. International law applied by the Soviet state was a system of rules in force between a socialist state and capitalist states and was a part of the general system of international law with rules differing in various points as compared with those traditionally accepted.⁸

Hrabar and other critics stated further that it was impossible to forecast a date for the victory of socialism in the world. For this reason it would be more appropriate to call the system of international law applied by the Soviet Union in its international practice Soviet-capitalist international law.

✓ These critics felt that the Soviet Union had been recognized by a number of capitalist states and had become a member of the international community. The general rules of law governing this international community were valid for the Soviet Union also.

2. Criticism and Self-Criticism

The period of relative freedom of juristic thinking and system-building was not destined to last, as economic and ideological liberalism was drawing to a close with the rise of Stalin to the position of dictator. The policy of the long-term economic plans for social and economic development, which would employ all the material and ideological resources of the people of Russia, was paralleled by a trend towards a monolithic reorganization of juristic thinking in the field of international law.

Discussion of errors was also animated by the conviction that the new policy would create a new framework for the development of the Soviet social order in accordance with Marx's prediction that the state and law would change their nature and disappear finally as a separate category. At the outset, however, new policies underscored the directive role of the state and the organizing function of the legal order, so that attention of Soviet jurists was turned away from the idea of the withering away of state and law and centered on the actual functions of the state and the legal system which was to play a role as one of the instruments of change.

Discussion involved practically everybody active on the legal scene.⁹ In this regard only the most important points of criticism are mentioned, inasmuch as they concern the theory and the formulation of doctrines of international law.

The attack was two-pronged. The influence of the doctrines and schools of international law as developed in the West was condemned, while traditionalists were taken to task for failing to understand the role of law in the socialist society,¹⁰ and Marxists were criticized for errors in their system-building. The Marxists were accused of eclecticism. They were also charged with underestimating the significance of the state as a juristic category, and with making international law a system of compromises between a socialist state and the imperialist members of the international community.

In this connection both Pashukanis and Korovin came under severe criticism. One of the important issues was the relationship between law, state and policy. Both authors were reproached for identifying the state with law and with policy. The critics said this deprived the law of its independent function and led to legal nihilism—a charge which was to weigh heavily against Pashukanis.

Pashukanis and Korovin recanted. Pashukanis replied to his critics at the November 1930 session of the Bureau of the Institute of Soviet Construction and Law of the USSR Academy of Sciences.¹¹

Early in 1931 the situation was ripe for a thorough discussion of the ideological position of law in the Soviet Union, including also the role of international law. After a prolonged debate, a resolution was passed which dealt with various points raised during the conference. The resolution condemned both the traditional and the dialectical tendency. Traditionalists (Hrubar, Sabanin, Kliuchnikow) were taken to task for denying the qualitative difference between the international relations of the Soviet Union and the normal relations between the capitalist states. At the same time efforts to construct a concept of socialist international law under the cover of Marxist ideology were also rebuffed as representing the viewpoint of petty bourgeois radicalism.¹²

The resolution silenced the traditionalists, and research and study of international law turned to a new direction. Korovin, who until then was one of the leading scholars in the field, was no longer the center of attention, and the ideological leadership was assumed by Pashukanis.

In 1928 Pashukanis published an article which lectured the Soviet scholarly community on the tasks of the Soviet science of international law. The role of legal theory, according to him, was to distill from the Marxist theory the class nature of law and to codify from Soviet practice a system of rules of international law designed to govern relations between the proletariat organized as a ruling class and the states of the bourgeoisie.¹³

In 1935 Pashukanis published his lectures in the Communist Academy.¹⁴ There he set out his new and more fully developed view of the general theory of international law. In the first place, he rejected the opinion that international law was a form of temporary compromise between the Soviet Union and capitalist states. In his view international law was not only the instrument of struggle between competing imperialist states, but also a means of class war between two antagonistic worlds and, therefore, a form of policy conducted by the ruling classes. From the fact that the two antagonistic worlds employed the same rules of international law which resulted in neither solidarity of ideas nor economic, social or technical unity, he deduced that it was not the form of legal norms that were important but the policy they served. As a result, rules of international law were to be used by the Soviet state only as a matter of expediency. The Soviet Union has used rules of international law only in a formal and superficial sense, Pashukanis observed, for the substance of international law was bourgeois and, therefore, not acceptable to the Soviet Union. He reasoned further that the only subject of international law was the state, and clearly not the Communist Party, or the ruling classes. The Comintern was not identical to the Soviet state, for the state could not be held responsible for its activities. The state in Pashukanis's view had two aspects. Internally, it was a mechanism of power, by which the ruling class suppressed other classes. Externally, it was an organization, which represented the ruling class.

Pashukanis expressed a belief in the broad application of the principle "rebus sic stantibus". The Soviet state must be entitled, in his view, to abrogate a treaty as soon as a change in its interests made it necessary. In this respect the freedom of the Soviet state had to be greater than that of other members of the international community, because the Soviet state had to be considered as the standard bearer of ideas which would inherit the future.

As the world was the arena of class warfare, Pashukanis did not rule out temporary compromises with the capitalist states. The purpose of agreements with capitalist states was not the stabilization of the present world order or maintenance of world peace, but rather was to indicate a temporary armistice in the movement toward world revolution.

In the final analysis, Pashukanis expressed a rather negative attitude toward the theoretical aspects of the study of international law. In the study of international law as a system of legal rules, he placed the emphasis upon the practical uses of the institutions of international law as they were actually in force. International law was an instrument in the hands of Soviet diplo-

macy. The purpose of theoretical study of international law was to construct the theoretical foundations for the foreign policy of the Soviet Union and to employ those institutions of international law which were useful for the Soviet government. Consequently, Pashukanis saw little use for international law doctrine during the period of transition. He also rejected Korovin's concept that with the passage of time bourgeois international law would become a socialist system of international law rules. Furthermore, Pashukanis denied the thesis that international law, as it was in force between the capitalist states, was binding upon the Soviet Union. Within the framework of the institutions of international law in general, the Soviet Union should employ only those rules which would suit its policies.

The fall of Pashukanis came shortly afterwards. Vyshinski and his acolyte Rapoport charged Pashukanis with recognizing the binding force of the entire bourgeois international law upon the Soviet Union. Moreover, he was accused of legal nihilism; for example, exposing the supremacy of politics over the law particularly with regard to the role of the "*clausula rebus sic stantibus*" in relation to Soviet treaties which had outlived their usefulness. His position in this respect was definitely out of tune with the Soviet policy of joining the League of Nations and its underscoring a faithful adherence to treaties. Pashukanis was also charged with overlooking the primacy of Soviet internal policies in the formulation of Soviet foreign policy and the creative role the Soviet state could play in the formulation of qualitatively different principles of socialist international law.¹⁵

Pashukanis's fall was followed by an attempt to lay foundations for the systematic study of international law relative to the needs of the Soviet state. The matter was discussed at the second conference of Soviet legal science (July 16-19, 1938), which began with the report of Vyshinski whose main thesis was that law could not be reduced to economy or politics. Soviet science of international law had to start from the following facts: the capitalist surrounding which determines the position of the Soviet Union; the struggle between the socialist and capitalist systems; and the constant expansion of the Soviet Union's cooperation with one or other groups of capitalist states, both in the field of economics as well as in the area of the efforts to preserve peace. The duty of a Soviet specialist in the field of international law was to work out problems of international law in accordance with the Leninist-Stalinist theory of the foreign policy of the Soviet Union. In the eyes of Vyshinski, rules of international law did not constitute a single international legal system which was in force between all states as members of the international community. Only those rules of international law which the Soviet government had recognized were binding upon the Soviet Union.

3. *Stalin's International Law*

The chief product of the 1938 ideological crisis involving the Soviet legal community was the twelve theses on international law.¹⁶ These may be summarized as follows:

Contemporary international law was developed during the period of the bourgeois revolution against feudalism and, therefore, was a system of legal rules underscoring formal equality of states that are independent, sovereign and national. Moreover, international law applies to relations between states, and its rules are established in the form of rights and duties in international agreements, in internal legislation and international customs developed during the process of cooperation and struggle between the states. Since World War I, victorious states had created a number of bourgeois-democratic institutions (e.g., the League of Nations and Kellogg-Briand Pact) in order to strengthen the role of international law. While international law was totally rejected by the Fascist countries, the Soviet Union accepted international law, for the Soviet Union itself was founded upon the principles of the international law and of national self-determination, not in the formal, but in a real sense. As the Soviet Union existed in the capitalist encirclement, temporary agreements concerning cooperation with capitalist nations in the field of industry, commerce and diplomacy were not excluded.

The Soviet Union rejected conceptions like spheres of influence, capitulations, and secret diplomacy. It favored national self-determination and equality of states, general disarmament and collective security, and was opposed to all forms of aggression. Further, the Soviet Union insisted upon the equality of the two systems of property relations and upon the recognition of a government monopoly of foreign trade. These principles represented the system of juristic doctrines and institutions of the socialist state in its international relations and international law. Moreover, these principles became a part of international law insofar as they were accepted by the capitalist states. While the Soviet Union rejected some institutions of international law (e.g., capitulations and mandates), it accepted others (e.g., diplomatic and consular law, law of international agreements, and ceremonial provisions). The task of the Soviet science of international law was to destroy what was seen as hostile concepts of international law and to present criticism of all "mistaken" views. The science of international law was to be in accordance with the principles of Leninist-Stalinist foreign policy.¹⁷

Thus, international law was turned into an instrument of Soviet policy. It was a set of techniques of international cooperation with the content determined exclusively by the substance of international relations. Vyshinski rejected the binding force of international law as a historically formulated set of principles of conduct. In his conception it was rather an external law of the state, similar to Triepel's theory of the primacy of the internal legal order.

The July 1938 Conference and Vyshinski's theses on international law received a new interpretation in the years which followed, marked especially

by the Munich Pact (1938) and the Molotov-Ribbentrop Pact (1939) that paved the way for the partition of Czechoslovakia and Poland. Speaking to the Supreme Soviet on October 31, 1939, Molotov assured his listeners that the concepts of "aggression" and "aggressor" had acquired a new meaning. That is to say, since the liquidation of Poland, France and England were the aggressors and not Germany, because the latter had expressed its willingness to come to terms with the Western world.¹⁸ This concept was further amplified in Molotov's address to the Supreme Soviet on March 29, 1940,¹⁹ on the subject of the war with Finland.

During the period of Soviet-German Pact, Kozhevnikov and Rapoport analyzed the current situation in terms of the Vyshinski doctrines of international law.²⁰ Professor Kozhevnikov defined international law as the "totality of historically changing rules of behavior, regulating specific political and economic relations of the struggle and cooperation of states in the time of war and peace". Moreover, bourgeois international law was the result of the victory of the bourgeoisie over the feudal order. It was progressive to the extent that it proclaimed the principles of formal equality, sovereignty and independence of all states. However, in the beginning of the nineteenth century the main powers had already begun to violate principles, rules and institutions of international law, while during the subsequent imperialist period a general violation of its provisions had become the norm. By the end of the nineteenth century the economic system of the capitalist world was characterized by the expansion of financial interests far beyond the political frontiers of the main industrial countries. This in turn led to the division of the world into spheres of influence and to the division of world markets and raw materials. From time to time the balance of power on which the peace in this system depended was disturbed due to the unequal development of the economies of the main capitalist countries. At such times the competition between the imperialist powers assumed the form of armed struggle. Thus in the capitalist world system, international law was used as a form of "stabilization" and "legalization" of the achieved "victories" in the course of political and economic struggle.

Moving from theory to practice, Professor Kozhevnikov declared that World War I was the first imperialist war. The peace treaties in general and the Washington Treaty in particular, which regulated naval armaments, stabilized and legalized the new division effected by the war. The function of the League of Nations was to maintain the new order and peace. At the same time the ruling classes of the victorious powers started the pacifist movement as a means of propaganda to discourage an attack on their gains and possessions. An example of this type of capitalist propaganda was the Kellogg-Briand Pact.²¹

World War I created conditions which made the October Revolution possible, declared Kozhevnikov, and the first socialist state, a consistently peace-loving state, was set up. The Soviet Union was constantly in danger of imperialist aggression as capitalists eyed covetously its territories and

resources. The policy of the Soviet Union was to avoid war entanglements. The Molotov-Ribbentrop Pact of August 23, 1939, was an act of peace as it permitted the Soviet Union to avoid the clutches of the Anglo-French Bloc.²²

Professor Kozhevnikov further elaborated that the policy of peace was not to be identified with bourgeois pacifism, which was a policy concerned with maintaining the status quo by the victorious group. The purpose of the Finnish war was to secure Soviet frontiers. Indeed the acquisitions in Poland and elsewhere, the Soviet-German Pact of August 23, 1939, the pacts with Lithuania, Estonia and Latvia, all served the purpose of strengthening the Soviet Union and therefore the communist order. It was not the nature of isolated actions but the final goal that provided a dialectical justification for Soviet policies. Although the Kellogg-Briand Pact was classified by learned Soviet professors as bourgeois pacifism, the Soviet pacts of nonaggression and repudiation of war were evidence of the peaceful policy of the Soviet Union.²³ Only in the hands of the socialist states are nonaggression pacts the tools of peace.

Kozhevnikov and Rapoport viewed the Soviet Union as struggling to establish the general recognition of the principles of socialist law in the world community. The equality of the two systems of property (socialist and capitalist), and the system of Soviet trade representations resulting from the state monopoly of foreign trade and nonaggression pacts. Moreover "international formulations and concepts change unavoidably with the change of international conditions . . ." so that Kozhevnikov, for instance, quoted Molotov's statement as regards the Anglo-French "aggression" after the defeat of Poland in September 1939, and concluded that the Soviet Union refused to recognize or reject international law in its entirety. In this respect, Kozhevnikov said, the Soviet Union followed the interests of its security and of international peace both in internal and international relations.²⁴

In this line of reasoning Kozhevnikov was followed closely by Rapoport who added a new element, namely a division of wars into just and unjust wars. This was not discussed during prewar years. Wars of national liberation and revolution against capitalist oppression were permitted.²⁵ The highest category of just wars were wars which aimed at strengthening the security of a socialist state.

Rapoport asserted that socialist international law was possible but only in relations with other socialist states or bourgeois democratic states of a separate type, such as the Mongolian People's Republic which was laying foundations for socialist reconstruction. No question of international law, Rapoport concluded, could be viewed at present except from the standpoint that this was the period of rampant imperialism which had released forces that were designed to bring about the disappearance of the Soviet state.²⁶

In the years soon after World War II four major systematic treatments of the Soviet view of international law appeared. Professor Krylov's lectures in the Hague Academy of International Law were published in the *Recueil*

des Cours (1947, vol. LXX) of the Hague Academy.²⁷ In the same year the Academy of Sciences sponsored treatise International Law,²⁸ a collective work of a team of Soviet scholars, and Kozhevnikov's textbook²⁹ were published. The academy-sponsored treatise enjoyed high authority. In 1949 it was translated into Bulgarian and in 1950 into Polish. To the same group belongs the study by Professor I. D. Levin on the concept of state sovereignty.³⁰

All four studies were written in the spirit of Vyshinski's theses; thus, states (whatever their class character) represented nations in their entirety. The appearance of the Soviet state, Soviet authors asserted in unison, had changed the character and tenor of international relations, for the Soviet Union followed a new policy in its international relations, and applied new principles of international law. These principles represented a new quality in the international legal arena. The Soviet Union was opposed to the codification of international law, because a code at this time would have entrenched the domination of the imperialist states. Moreover, codification of international law would be contrary to the principle of state sovereignty and nonintervention into internal affairs of states.

Krylov in his Hague lectures gave a restricted interpretation of the concept of just and unjust wars, saying that only defensive wars were just wars. The qualification of conflicts as just wars did not, he argued, depend upon the class character of the parties involved. *Mezhdunarodnoe Pravo* of the Academy of Sciences, on the other hand, had a different theory. Wars, it was argued, were unavoidable as long as the social order of exploiters continued to exist. All revolutionary wars were just, as were presumably those conducted by the Soviet Union, which included those against Poland and Finland. Reactionary wars aiming at maintaining the status quo and the rule of the exploiting classes were, however, unjust with no exceptions made for the defensive wars of the capitalist states.

Thus Vyshinski's doctrines had survived intact until 1949 when the changed international situation forced a reexamination of the status of Soviet learning in the field of international law. The stock-taking was necessary for two main reasons:

In the first place, the Grand Alliance, victorious in the war against the Axis powers, fell apart over the issue of the economic integration of Europe under the Marshall Plan. According to Molotov's statement at the preliminary conference of the foreign ministers of France, Britain and the Soviet Union, the Soviet Union rejected the Plan for the following reasons: (1) The Plan represented a threat to national independence of the less industrialized nations, and (2) The Plan was an effort to delay the threatening economic crisis in the United States by opening new markets for American exports, to the detriment of local industries.

In the second place, the creation of the Cominform officially initiated the ideological and economic integration of Eastern Europe.

The new situation called for the revision of Soviet scientific findings on a

number of research fronts. This was brought about by the "exposure" of the mistakes committed by Soviet scholars and resulted in a demotion of the leading personalities in various fields of learning. In economics, Professor Eugene Varga and his Institute of World Politics and World Economics were the victims of the purge. In law, Professor I. P. Trainin and Professor I. D. Levin were taken to task.

Varga and Trainin had at one time, when the position of the Soviet satellite states in Eastern Europe was not yet officially clarified, formulated the view that these countries represented a new social and political formation. Following the meeting of the Nine Communist and Workers Parties in Poland in September 1947, their theories were rejected as no longer corresponding to the new reality.³¹

The upshot of the discussion was that, contrary to the views of Varga, capitalism was in the throes of an economic crisis and was weakening. Moreover Varga's conclusion that Soviet satellites in Eastern Europe were states of a special type, neither capitalist nor socialist, was also wrong because they now were socialist states on the lower stage of their development, guided and assisted by the Soviet Union in their movement towards higher forms of social and economic organization. In this situation it was felt that a new attitude had to be formulated toward the capitalist world to prevent capitalism from exerting its influence over the economy and social structure of the new socialist states.

In this connection, during the 1949 Conference of the Scientific Board of the Law Institute of the USSR Academy of Sciences the views of Professor Levin, as expressed in his study of "Sovereignty," were subject to special criticism. It was felt that his theory still opened a way for hostile intervention into the affairs of the new socialist nations. Professor Levin duly recanted and in his self-criticism stated:

"Under the conditions of the present historical epoch, the principle of sovereignty signified, in the first place, full independence of the socialist system—including the USSR and the countries of people's democracy and of their actions both in the external and internal field, from the state of the imperialist system, safeguarding an exclusive jurisdiction over their territories . . . State sovereignty is the banner in the struggle of colonial nations against imperial domination and in the struggle for national independence."³²

The upshot of the discussion was that Soviet scholars should combat the influence of Western cultures and cosmopolitanism, and they should eliminate all feeling of inferiority before foreign science. They should study the achievement of Soviet constitutionalism and the struggle of the Soviet people to guarantee full freedom to Soviet nations within the framework of the 1939 Constitution, stressing the leading role of the Russian nation within the Soviet multinational state. The problems of just and unjust wars and of state sovereignty should be restudied in terms of class warfare.³³

There was no interest during this period in the development of the legal system governing relations between socialist states as a separate branch of

international law. The model for the relations between socialist nations was to be found in the Soviet law and in the role of the Russian nation as the leader. In the 1947 edition of *International Law*,³⁴ Professor Krylov stated quite firmly that the concept of socialist international law has no future. He pointed out that the Soviet Union contributed a number of progressive principles to general international law which principles reflected the content of Soviet internal law, also the law of the federal state embracing numerous nations that form the Soviet Union. Indeed the attention of Soviet scholars was turned towards the problem of whether it was possible to maintain a system of socialist states which are not part of the Soviet state. Joining the Soviet Union might not necessarily be incompatible with membership in the world community, or even in the United Nations. Smaller nations, it was argued, enjoyed a higher degree of sovereignty than those outside the framework of the first land of socialism.

Stalin's intervention into the theoretical controversy in the field of linguistics in 1951 (Stalin, *On Marxism and Linguistics*) revived the issue of "socialist" international law. At that time it was clear that as the international situation developed socialist states in Eastern Europe would continue to exist as independent countries. The new protagonist of the separate system of international law in force in the system of socialist countries was Professor Kozhevnikov.³⁵

Lessons which Kozhevnikov drew from Stalin's work were linked with the basis-superstructure concept. Now, Kozhevnikov explained, as the socialist system of states exists, a socialist international law has its own basis. Currently, the world is divided into two systems: capitalist and socialist. The world is under the rule of international law, which is a legal system of the period of transition, and, since capitalism is doomed and will be replaced by socialism, the international law of the present will be replaced by the socialist international law.

Kozhevnikov's theory was later developed by Korovin in the 1951 edition of *Mezhdunarodnoe Pravo* (International Law), published under the auspices of the USSR Academy of Sciences.³⁶

Korovin contended that there were in force three systems of international law: one for the capitalist system, one for the socialist system, and finally one for the relations between the two systems. Critics of the 1951 edition asserted that international law is a result of historical development not directly dependent on the economic basis of the states involved. In reality there was no socialist or capitalist international law, though one could speak of democratic or undemocratic tendencies in the policies of countries involved. The growing influence of the Soviet Union forced capitalist states to adopt a more democratic line in their policy and in their practice of international law.^{36a} This viewpoint began to dominate. Korovin abandoned his theory of tripartite division of international law in his article dealing with the generally accepted principles of international law.³⁷ In 1953, the 1951 edition of *Mezhdunarodnoe Pravo* was roundly condemned by the

international law sector of the Law Institute of the USSR Academy of Sciences.³⁸

Korovin's efforts to mend his errors helped little. The Nineteenth Congress of the Communist Party was critical of the situation in all branches of legal science, and the January 1953 issue of the *Sovetskoe Gosudarstvo i Pravo*³⁹ condemned Korovin and his book. Korovin was demoted from the leadership of the Institute and the entire generation of older scholars, including Krylov, Durdenevskii, and Mankovskii, were harshly reprimanded. Moreover, Korovin and Kozhevnikov were dismissed from the Editorial Board of the *Sovetskoe Gosudarstvo i Pravo*.

The death of Stalin visibly relaxed the climate for juristic discussions in the Soviet Union. Korovin again raised the issue of the socialist international law and discussed the question as to why international law, which was a law for the entire international community, was not a superstructure of a single economic system. He came to the conclusion that all discussion of the nature of international law with reference to the basis-superstructure concept "leads logically either to juristic nihilism and the denial of international law . . . , or to a revision of the Marxist-Leninist teachings concerning state and law." He found a solution in the fact that, despite the different economic bases in both the socialist and the capitalist systems, "Rules of international law are parts of both superstructures—the capitalist and the socialist." He pointed, not without reason, to other analogous situations, namely criminal law, which forbade some common crimes in both types of societies. He added, however, that despite these similarities, the two superstructures remained different. Thus, the essential difference consisted in the varied purposes served by apparently similar legal rules.⁴⁰

Korovin's article engendered wide discussion⁴¹ with the result that again in the summer of 1955 the question of the socialist international law and its place in the general system of legal norms was a subject of scientific discussion once more the concept of a socialist international law was rejected.⁴²

4. *Socialist International Law and the International Law of Peaceful Coexistence*

The 1955 discussion was the last event on the Soviet scientific scene which still bore the mark of the Stalinist period. Under new leadership, the Soviet Union was cautiously experimenting with a new policy, both within the Socialist Commonwealth of Nations and the world community. The attention of Soviet scholars was turned to the broader problems of international relations. This reorientation argued against the idea of separate legal systems of international law and argued in favor of a unified system of rules which Soviet diplomatic practice and the efforts of Soviet scholars might reshape to further the interests of the Soviet Union. The Soviet juristic community was also preparing to focus its attention upon the problems of peaceful coexistence. The theoretical foundation for the common

legal system of the entire international community was laid by Tunkin who, in his Hague lectures, declared peaceful coexistence of states with different social orders to be the central question of the international legal order. He asserted that, although socialist and capitalist states differ as to the social values which the law has to protect, agreement and therefore a common legal system is possible. In spite of the disagreement as to the fundamentals of the legal order, there was no "insurmountable obstacle in reaching an agreement relating to accepting specific rules as norms of international law."⁴³

Confronted with the fact that within the broad community of nations a special place belongs to the Socialist Commonwealth of Nations he found a major distinction between the world community and the Socialist Commonwealth—not in the formal context of the rules of international law governing relations between the states, but in the political principle of socialist internationalism, which inspires cooperation between the socialist states. Thus, Tunkin said, while the legal system was premised upon similar concepts the degree of political cooperation between states could well be different.⁴⁴

Durdenevskii, Zadorozhnyi and Shurshalov wrote about the principle of peaceful coexistence recognizing its binding force in relations between socialist and capitalist countries. Durdenevskii, who wrote after the Bandung Conference, elevated the five principles of peaceful coexistence to an intrinsically important concept of international relations.⁴⁵ Peaceful coexistence was also discussed by the annual conference of the International Law Association.⁴⁶

In its original form, Tunkin's theory recognized a single system of international law in force between all states, socialist and capitalist alike. This system was the result of agreements between the states, and such agreements were the main source of international law. Indeed agreements between socialist and capitalist states were motivated by national interests and were based upon national economic orders—the two-base theory. As this international law was the result of international agreements, it could not be socialist international law. The democratic character of this modern international law reflecting agreements between socialist and capitalist countries was, according to Tunkin, directed to regulating relations between states with different socio-economic structures, to the advantage and equality of all parties and in the interest of peace. Tunkin therefore concluded that:

"International law is the totality of norms, which were developed on the basis of agreements between the states, which govern their relations in the process of struggle and cooperation between them, expressing the will of the ruling classes, and are enforced, in case of necessity, by the pressure applied either collectively or by individual states."⁴⁷

Events in Eastern Europe intervened in the elaboration and development of Tunkin's theory of peaceful coexistence as a fundamental principle of international law. The Polish and Hungarian unrest forced the Soviet government to place Soviet relations with other socialist countries on a legal,

or at least quasi-legal, basis. Thus developed the emphasis on the exceptional role of international law in mutual relations between socialist states. Korovin was a standard bearer for the revival of the socialist international law. In his works since 1956, he once more revived all the ideas he had been forced to abandon earlier. The May 1956 issue of *Sovetskoe Gosudarstvo i Pravo* carried an article by Korovin on the role of the masses and the Communist Parties in the development of international law. In the 1957 edition of the *Mezhdunarodnoe Pravo* he returned to his tripartite division of international law and also reaffirmed his views on the system of international law. Contrary to what Tunkin thought of proletarian (socialist) internationalism, Korovin thought that this principle was a principle of law rather than of politics. "In the process of the cooperation of the socialist states, foundations are laid of the new international law. Its leading principle is the principle of proletarian internationalism."

Korovin's position became impregnable following the October 1956 declaration of the Soviet government regarding the platform for the Soviet relations with Eastern European countries of people's democracy.

Tunkin in turn was forced to take account of the new realities. In his essay, contributed to the newly founded *Soviet Yearbook of International Law* published by the Soviet International Law Association of which he was the president, he came closer to Korovin's viewpoint by accepting Korovin's thesis regarding the existence of the socialist international law, while he also recognized the existence of the general system of international law.⁴⁸ This view was a contradiction of the opinions he had expressed a few months earlier in the Hague lectures, in which he attacked Korovin's theories on socialist international law.⁴⁹

In his article in the *Soviet Yearbook of International Law*, Tunkin relied on the 1957 Declaration of Twelve Communist Parties, which ended the ideological rift following the armed intervention in Hungary.⁵⁰ Emergence of the system of socialist states, according to Tunkin, transformed the principle of proletarian internationalism into a principle governing relations between the socialist states. "The principle of proletarian internationalism . . . goes further than the principle of peaceful co-existence. In a manner of speaking the principle of proletarian internationalism included the content of the principle of peaceful co-existence brought it to a qualitatively higher level, corresponding to the historically higher level of international relations." Moreover, from the principles of proletarian internationalism flow for the socialist states concrete rights and obligations, which at the same time have the character of moral and legal rights and obligations. As relations between the socialist countries developed, this moral-political principle received within these relations the character and the principle of international law. Side by side with the principle of socialist internationalism in relations between the socialist states, other principles of international law were developed which were characteristic of the new international relations. They were not only local principles or rules, but in comparison with the general

principles of international law, they were norms of a higher type—socialist principles and rules of international law.⁵¹

Tunkin's retreat from the earlier position that there is only one single system of international law and his endeavor to combine his views with theories of Korovin found support. In his monograph, Professor Levin attempted to combine Tunkin's definition with the elements of Korovin's definition:

"'International law' is a totality of norms, which regulate relations between states, with partly identical and partly differing social orders, in the process of cooperation, competition or struggle these norms, expressing the will of the ruling classes in these states, are established by agreements between states, and are enforced through individual or collective efforts which involve compulsory measures, as well as measures of moral political influence."⁵²

Levin's formulation was followed by other Soviet authors, who continued to add new elements to their definition of international law. Kaluzhnaia (who with Levin edited the 1960 edition of *International Law*)⁵³ added that the purpose of international law was the maintenance of peace in the entire world and the peaceful cooperation of two opposed systems. Another Soviet scholar, Blishchenko, added that "in the framework of the generally democratic foundations of international law its purpose is to give expression to the concordant will of the ruling classes . . ."⁵⁴

Bobrov's definition in his *Contemporary International Law* (1962), retaining as the purpose of international law the guarantee of world peace and peaceful coexistence, broadened the concept of the international community. He included, in addition to states, peoples struggling for independence and international organizations. International law, he said, regulated cooperation of states with varying social and economic structures, and included uncontested norms of international law which corresponded to democratic legal consciousness and were the expression of the will of the ruling classes.⁵⁵

As various theories and views were propounded and developed, the condition of Soviet jurisprudence in the field of international law began to resemble that of the free world. On one hand Korovin's views, or rather his freedom to express them, were vindicated. At the same time the concept of the unity of international law for the entire international community was gaining ever wider recognition, reflecting the basic fact that the independence of the Eastern European socialist states was increasing. International organizations of the Socialist Commonwealth were strengthened, affording a truly international platform for cooperation, the exchange of views and, moreover, emphasizing still further the elements of agreement and mutual accommodation present in the relations of smaller socialist states with the Soviet Union.

Shurshalov, a Soviet jurist in an important position in the Council for Mutual Economic Aid, defined the function of socialist internationalism as applicable to relations between the socialist countries in the following terms:

"The principle of socialist internationalism is not only the most important moral and political principle, but also a juristic principle, which is expressed in a system of treaties and agreements, concluded between the socialist states, which have established, on the basis of this principle, concrete rights and obligations for each and every socialist state."⁵⁶

The principle of peaceful coexistence was debated at the 21st (1959) and the 22nd (1961) Congresses of the Communist Party of the Soviet Union. In a sense these congresses, especially the 22nd Congress, brought an end to the Stalinist period of foreign policy and international law. This fact was dramatized by Molotov's letter to the Congress in which he asserted that Lenin was always opposed to peaceful coexistence with capitalism; further he supported armed insurrection as a means for the solution to the historical struggle between the socialist and capitalist systems. In its resolution addressed to Soviet legal science, the Congress directed Soviet jurists to analyze aspects of the current situation in terms of international law. This resolution directed that the science of international law abandon the position of dogmatism which led to underestimating the importance and the influence of the socialist system in the world. In effect the Congress declared that wars, in particular imperialist wars, were no longer an instrument of progress. Instead, the socialist world system had become the chief revolutionary force as regards human progress towards socialism and eventually communism, especially through the liberation of colonial and subject peoples. These two aspects outlined the program and the legality of peaceful coexistence. Wars, except wars of liberation, were declared no longer possible.

The Congress' directives were analyzed in an important article by Zadorozhnyi and Kozhevnikov who cleared the ground of the theoretical and ideological obstructions inherent in the teachings of Molotov and Vyshinski. Lenin, in their opinion, had adopted the program of developing socialism in the Soviet Union which at that time was surrounded by the capitalist countries, and he predicated the accomplishment of this task upon maintaining peaceful relations and economic cooperation with the capitalist countries. Peaceful coexistence between two world systems was not tantamount to class peace. It was rather a form of class warfare tailored to new world conditions in which a new world war would threaten the continued existence of human society.

Furthermore, they attacked Vyshinski for underestimating the possibility of preventing wars, as well as underestimating the role of the popular masses in international law; in this connection, Vyshinski's concept of sovereignty, which he limited exclusively to the status of total independence of the state from any other state, was assailed. Sovereignty, Zadorozhnyi and Kozhevnikov held, could not be identified with the power of the ruling class.⁵⁷

The new concepts of sovereignty and international law were linked to the announcement that the Soviet state had become the state of all the people and was no longer the state of the ruling class. Consequently, international

law was no longer the law of the ruling class but the law of the entire people. This also influenced the content of international law of the capitalist states. The class interests of monopolistic capital were tied to war and aggression which were no longer permitted by international law, but which had been declared to be the gravest crime against humanity. Consequently, even in capitalist states international law did not represent the will of the ruling classes, but had to correspond to the will of the peoples struggling for peaceful coexistence.

This last statement of Zadorozhnyi and Kozhevnikov was also an attack on Tunkin and all those who had espoused the theory of compromise as the basis of the international law system. They accused him and those who had accepted this theory of being perpetrators of the Vyshinski tradition. "To us", they declared, "the doctrine of the concordant wills of the classes as the basis for international law looks as unscientific as the thesis that the will of socialist states and the will of the ruling classes of the capitalist states are juristically equal."⁵⁸

Zadorozhnyi's and Kozhevnikov's article forced Tunkin to revise his views, and he analyzed the results of the Congress in two articles.⁵⁹ He attacked Vyshinski for his reliance on force in international law. As the Soviet state had become the state of the entire people, the declaration of the will of the Soviet state represented the will of the entire Soviet people, establishing a situation contrary to that in the capitalist states, where the will of the state represented the will of the ruling class.

In his theory on the structure of the international law system, Tunkin expressed the view that international law is not a uniform legal system. It consists of many parts which are in force between various groups of states. In a sense he adopted the theory of regional systems of international law. However, relations between members of a particular regional system are not necessarily of the same quality as are those between the members of similar regional systems.

This permitted Tunkin to establish the international law in force between socialist states as a separate system which, at the same time, was still a part of the general international law. The difference between rules of general international law and those in force between socialist states was that the guiding principle of relations between socialist states was socialist internationalism, whereas general international law was based upon the principle of peaceful coexistence, which was a principle of peaceful contest.

The debate which followed the 1961 Congress of the Communist Party of the Soviet Union set both the tone and the framework of the theoretical work of Soviet jurists for the period to come. The number of scholars working in the field of international law grew considerably along with the number of periodical publications dealing with international law. Work on international law was no longer limited to the single center of the Institute of Law of the USSR Academy of Science, International Law Sector, but was also developed in the Institute of International Relations and the Soviet Inter-

national Law Association (established in 1957) which had published its own yearbook since 1958.

The current Soviet research in international law is directed mainly towards the reform of international law through treaties and towards the codification of international law, in addition to studies relating to the law of the expanding community of nations as a result of the dismantling of the colonial empires. The law of diplomacy receives a good deal of attention as does the problem of the place of the Soviet Union in the present world. Institutions of the Socialist Commonwealth and the United Nations and its organizations also provide the subject matter for a great many studies.

The history of Soviet science of international law was marked by a great number of systematic presentations of international law as a whole. This was due to the rapid change of the ideological foundations of Soviet foreign policy, resulting moreover in frequent shifts from the policy of status quo to the policy of change, from the policy of hostility towards the western world to that of cooperation. Furthermore, some of these treatises of international law were works adapted to the needs of instruction, while others, particularly those published under the auspices of the USSR Academy of Sciences, were also instruments of ideological indoctrination. Soviet international law treatise were hardly ever profound or exhaustive studies of Soviet practice and doctrine. In 1967, the first two volumes of a major six-volume treatise entitled *Course of International Law* were published. These volumes were the product of a collective effort of a number of jurists, under an editorial committee headed by V. M. Chkhikvadze, an eminent jurist who won the spurs of Soviet juristic scholarship in fields other than international law.^{59a}

D. The Traditional School of International Law in the Soviet Union

In addition to the Marxist school of international law there is a visible, traditional trend in the Soviet Union. Although there was an emphatic rejection of international law doctrines as advanced by Western European scholars, there was still a marked influence of Western European scholarship upon Soviet international law. This influence was prevalent particularly with regard to the style of work done; here Soviet work followed western models in respect to the literary form of doctrinal writing and general materials for international law study. In a sense Soviet legal literature, including that of international law, has remained thematically within the compass of the legal tradition it shared with the West.

One can distinguish two main phases in the development of the traditional trend. In the first years of the Soviet state, Soviet scholars in law enjoyed considerable freedom in the formulation of legal theories, so long as their work was useful to the Soviet state. This was the period when the Marxist school and the traditionalist trend were represented in their purest form.

While one group of scholars in the Soviet Union tried their hand at Marxist legal constructs, the others were persuaded that knowledge of international law was useful for the Soviet state in relations with the capitalist countries and therefore produced studies concerning various subjects of international law as that law was known to the world at large. In the initial years writing in the traditional vein was not frowned upon, as it was realized that books and studies of this type, though short of ideology, had much information necessary for Soviet government officials in their dealings with the outside world. Studies written by Hrabar, Kluchnikov, Sabanin, Santov, Gogbargh, Rovetskii, and Durdenevskii in the first decade of the Soviet rule were primarily directed towards information and education rather than ideological system-building. Systematic treatments of the law of economic relations, of consular law, of collections of treaties and diplomatic correspondence, etc., were thus produced. One of the first international law works which appeared under the Soviet regime, a book obviously prepared before the Bolsheviks came to power, was *The Course of the General International Law*, written by Zakharov and published in 1918.

Vyshinski's intervention resulted in the condemnation of both Marxist and traditionalist trends in the field of international law. In the following period neither objective nonpartisan studies of international law nor genuine Marxist analyses of the institutions of international law were undertaken. Hence all writings on international law subjects took on the form of propaganda for the current foreign policy line of the Soviet Union.

Those Soviet scholars who sought a field where objectivity was still a virtue turned to history, and it is in this long list of Soviet scholars who wrote on the history of international law that the names of practically all important Soviet jurists are found. The most eminent of these was Hrabar, who made a career of writing historical studies, ending with his monumental history of the science of international law in prerevolutionary Russia.⁶⁰ Hrabar's works have given a different orientation to the understanding of the origins of international law, demonstrating that it was known and its institutions were respected beyond the West of Europe.

Paradoxically, while the first effect of Vyshinski's intervention in the activities of learned Soviet jurists was to stop the flow of original legal publications, it was not altogether without merit. While the opinions of Soviet scholars regarding the peaceloving character of Soviet policy, or the benevolent character of Soviet aggressions or annexations, or the policy of self-determination deserve no respect, these Soviet scholars had familiarized the younger generation of Soviet jurists with the issues and problems of international law. This enabled these younger scholars to employ, following the death of Stalin, a more acceptable idiom which contributed to a better understanding of the present structure of the international community as affected by the emergence of the socialist state system and the socialist system of property relations. Studies produced by the younger generation of Soviet scholars, including Tunkin, Shurshalov, Avakov, Kaluzhnaia,

Meleshko, Blishchenko, Minasjan, Ushakov and others, have become more readable and interesting. A distressing feature of Soviet scholarly manners, however, is still the continued deviousness in the presentation of legal arguments in works for foreign consumption, which are far less aggressive when compared with works produced for home consumption.

Another constant feature of Soviet jurisprudential works in international law is a total absence of any critical attitude towards Soviet foreign policy. It was possible to criticize Stalin and Vyshinski for their theoretical views, but not for their policies.

Finally, Soviet jurists working in the field of international law have not yet dared to adopt a critical attitude towards the official history of the Soviet Union. Regrettably, this attitude is also reflected in the collections of documents concerning Soviet foreign policy, e.g., none of the numerous collections of Soviet state papers and diplomatic correspondence give a full picture of the policy of reconquest of the nations which had seceded from Russia and had established their own states following the October revolution.

There seems to be a serious obstacle in the Soviet Union toward achieving that degree of freedom to criticize which characterizes legal thought in other social environments. The tendency in Soviet scholarship is to present a uniform front and formulate a generally accepted position concerning legal issues which at a given point in time appear to be politically important. The purpose of scholarship is to produce suggestions for practical solutions. Only one solution can be the right one, only one may correspond fully to the doctrines of Marxism and only one can suit the policies of the Soviet state. Soviet society with its centralized planning tends to rely on single solutions for all its legal, as well as social problems.

This attitude is valiantly aided by the principle of collectivism. Soviet scholars engaged in research pursue their work in teams guided by a recognized leader whose authority is that of the Communist Party. Intellectual life is greatly influenced by the tenet that Soviet society is a scientifically managed society. Scholarly activities occupy, officially at least, an important place in the public life of the Soviet Union. The very purpose of science is to discover the principle involved in solving a social or economic problem, and theoretical controversy is justified only if it will lead to the discovery of that principle. While diversity of opinion is considered essential in the intellectual climate in an open society, in a socialist world diversity can be tolerated only as a steppingstone towards community of views and single-mindedness which must be shared by political leadership, experts and eventually the entire nation.

This does not mean that there is no genuine controversy and conflicts of opinion among Soviet jurists. On the contrary, Soviet scholars disagree frequently and sometimes even violently. The very concern of members of the scholarly community with differences of opinion indicates the deeply felt attachment to convictions and opinions. It is also true to say that when

controversy touches a point of practical importance, its resolution is a matter of practical policy, and agreement among scholars is regarded as vital. Frequently a united front is reached, not through the force of arguments, but as a result of policy decisions from above.

In order to give a clearer picture of conditions under which Soviet scholars work, one more factor must be mentioned. Victory in a theoretical conflict opens the road to honors, emoluments, and high governmental positions, which are in limited supply. Thus a leading position on the editorial board of an important periodical, the directorship of the Institute of Law in the Academy of Sciences of the USSR, the leadership of a scientific collective at a university, or an editorial position in a collective project for the preparation of an important textbook—these all mean important additions to professional salaries, future membership in the Academy of Sciences, and assignments in interesting capitals abroad. This explains the ferocity of scientific controversy among Soviet scholars.

II. BASIC DOCTRINES OF SOVIET INTERNATIONAL LAW

A. *Sources of International Law*

1. *Sources in the Substantive Sense*

Soviet theory of the sources of law is rooted in the general doctrine of the respective roles of the state and of social structures in the transition to higher levels of social organization as conceived by historical materialism. The original theory was that the process of transition was a social process. The role of the state and law was secondary in this context. According to Stuchka, Pashukanis, and their followers, law had a function in society, but once the institution of property disappeared, the state and law would also disappear. Action by the state would produce little change in social structures. Even expropriation of exploiting classes did not by itself constitute a transition from the lower level of social existence to the higher forms of cooperation.⁶¹

This theory was adequate for the first period of the history of the Soviet Union. Once, however, the state undertook to manage and plan for the economic development of Russia, a new theory had to be worked out.

The new theory was the result of a clash between two Marxist orientations. The deterministic interpretation of history, stressing the spontaneity of social processes, was superseded by the theory which insisted that Marxist determinism and concern with the economic forms of social activity were compatible with the intervention to hasten the march of history. The policy of the five-year plans brought about a flood of regulations, directives, instructions and other enactments to marshal national resources and organize

industrial enterprises to regulate consumption and production and to bring about a conscious and planned realization of a socialist society. Direct ties between the legal rule and economic life were not broken but strengthened. If, according to Pashukanis, law was bourgeois and the economy was socialist, then, according to Stalin, both law and economy could be socialist in content and function. The nature of the legal rule was determined not so much by its institutions and forms as by its social purpose.

The Soviet mechanism of change thus represented a marshalling of all three elements—law, social structures and the state—combined with the principle of a deterministic concept for the purpose of social action. As an editorial in the Soviet theoretical magazine stated:

“Every society, irrespective of its form, follows laws based on objective necessity. In the socialist society this necessity acts as the economic law conditioned by the external situation of the society, by all historical antecedents of its development; this objective necessity, perceived by men, infiltrated into the conscience and the will of the people—in the persons of the builders of the socialist society—as the leading and organizing force of the society, the Soviet state and the Communist party, directing the activity of the masses.”⁶²

As an important Soviet jurist wrote:

“It would be a mistake to consider economy as the only factor determining the understanding of the historical processes. One must take into consideration Marxian teachings on the mutual relations between the basis and the superstructure and of the bearing which the superstructure may exercise in turn upon its economic basis, so as to cause its further development and change. Politics are not a mere impression moulded from economy, as the vulgar materialists try to represent them, but rather are the conclusions drawn from a generalization of the economy.

Politics are fully expressive of the economic level which conditions the class content of the state activity, in shaping by legal regulation the relations between the classes, the influence of the state on the development of the sciences, of arts, and, vice versa, the influence of the superstructure on the economic basis.

Politics, state and law, represent the three sides of a single process; politics (a full expression of the economic system) constitutes a transmission belt which sets law and the state in motion and correlates their cooperation and relationship.”⁶³

The immediate effect of the new approach to the role of the state and the use of law in the implementation of the laws of history was the reappraisal of the role of the state. The state was not the supreme good in itself but it was an indispensable tool for the realization of historical progress, provided it was a socialist state. With this modification the state almost regained the status which it was accorded in Hegelian philosophy; that is, as the indispensable vehicle of history. As the voluntaristic aspect of the law-making was underscored, it was only logical that within the framework of internation-

al law the element of compromise and agreement as the material source of law governing international relations was also stressed.

While the socialist state has the power to assume international obligations, theoretically it is restricted by the fact that according to Marxist philosophy the general course of history is predetermined. Therefore, the source of the law in terms of the dialectical interpretation of history is understood as "the material conditions of social life, that is to say, the type of productive relations which are characteristic of that society." This in the final analysis determines its ideological superstructure.⁶⁴

Another example of the rules of international law, which do not depend upon the agreement of the parties, is given by the *Dictionary of Diplomacy* in the form of the general principles of law:

"In spite of the variety of norms of international law . . . there are also principles which determine profoundly the bases of international relations in a given historical epoch, obligatory for all states irrespective of whether their validity depends on the strength of the custom or of the international conventions. These are what are called general, fundamental, or elementary principles of international law which are generally recognized . . . The most important basic principles at the present stage of our evolution are: the principle of the preservation of peace and universal security, the principle of sovereignty, the principle of non-intervention in the internal affairs of other states, the principle of equality of states and the principle of the strict execution of conventions and international obligations."⁶⁵

The Soviet devotion to the fulfillment of international obligations—the *Dictionary* continues—must not be understood as an abstract and dogmatic position on the absolute validity of all international obligations. If this were so, the continuous enforcement of these obligations would prevent the development of international relations. "To deny, in essence, the possibility of any changes of the status quo would be reactionary and contrary to basic concepts of historical science."⁶⁶

In effect, therefore, the voluntaristic element in the Soviet theory of sources was counterbalanced by the objective limit of the power to make rules for the international community. The solution to this obvious contradiction was that the determinant factor for the historically correct, or incorrect, rule was the political purpose and motivation behind the agreement. It was also axiomatic that a socialist government (and especially the Soviet government) always followed the right kind of policy.

2. *Agreement as the Source of International Law*

Initially the Soviet regime demonstrated an ambivalent attitude towards treaties and international agreements concluded by the previous regimes, while on occasion it claimed rights inherited from the imperial Russia under treaties with other powers. The Soviet government claimed the right to choose between those international obligations which were to continue in

force and to reject those which for various reasons were not to be honored. The same also applied to international custom. International agreements, bilateral and multilateral, and international practice as evidence of customary law required confirmation by the Soviet government to be a rule of international law.⁶⁷

In the post World War period Soviet theory of sources was influenced by the Soviet Union's participation in the founding of the United Nations Organization, and its acceptance of the Statute of the International Court of Justice, with its article 38 listing additional sources of international law.

Krylov and Durdenevski in their joint study (1947) and the Diplomatic Dictionary (1948) have expanded the list of sources of international law adding to international agreements and custom decisions of international bodies (United Nations and its bodies), internal legislation and practice of states and general principles of law.

Formal expansion of the list of sources of international law in the post World War II period did not signify a substantive change of position in the sense that only formally accepted norms of international law were obligatory and binding upon the Soviet Union. In general, precedence of sources was determined by their proximity to the agreement and its acceptance by the Soviet government. International custom, though recognized as a source of international law, was binding for the Soviet Union only if accepted by it.⁶⁸

Some difficulty was experienced with this tendency as regards the force of the general principles of law. The general principles of law were a source of international law if they were "established either through the appropriate international treaties or by international custom, and are in effect a generalization of rules of law found either in the treaties or formed by the custom." Principles which are not found in international treaties or established by international custom are not "general principles of law."⁶⁹

Soviet scholars explain article 38 of the statute of the ICJ and the sources listed in it as providing the body of rules to be applied by the International Court of Justice and not as sources of law binding upon the Soviet Union. The same applies to the decisions and resolutions of international organizations which, to a certain extent, can be considered a source of international law if they receive international recognition. "From this point of view, decisions taken by a qualified majority of the Security Council (given the concurring votes of its five permanent members, . . .) on matters within its competence can be sources of international law." The same applies to decisions of international administrative organs (e.g., the congresses of the Universal Postal Union, etc.) adopted in accordance with their charters.⁷⁰

3. Law-Making Treaties, Codification of International Law

In the opinion of Soviet scholars, the development of international law has been influenced by the emergence of new historical formations on international levels. At various periods of time, this development enabled states re-

presenting higher and lower social and economic formations to coexist and maintain international relations. In 1917 the socialist state, historically the highest social and economic formation, became a member of the international community. New principles of international law were adopted and old principles were filled with a new content.⁷¹

In principle, Soviet scholars rejected the distinction between law-making and other types of treaties, although they admitted that the United Nations Charter represented a singularly important piece of contemporary international legislation, implementing the principle of peaceful coexistence which was the central principle of contemporary international law.⁷²

Codification of international law received, in connection with the work of the International Law Commission, a good deal of attention from Soviet scholars. Initially their attitude was hostile to the idea of codifying international law. They were convinced that codification was a device to strengthen the rule of law favoring the status quo in international relations; to stabilize the influence of the bourgeoisie in international law, and to obstruct progress towards a new international community. Soviet scholars were convinced that codification was a form of intervention into internal relations of sovereign states and was linked to the idea of the supremacy of international law over the municipal law of individual states.⁷³

In due course, the position of Soviet scholars was modified and codification has now been accepted as a legitimate technique for the advancement of international world order, provided that it is a progressive one.⁷⁴ Following the death of Stalin a gradual change took place as regards Soviet involvement in the activities of the United Nations, including the activities of the International Law Commission. Soviet scholars as members of this Commission began to take an active and frequently a constructive part in the work of codification of international law. A change also occurred involving the distinction between law-making and contract-making treaties. One of the important law-making treaties, the Charter of the United Nations, was described as a treaty of the special type, representing a charter of contemporary international law developed on the basis of the principle of peaceful coexistence.

Soviet scholars have recognized that the Charter is not yet a full and final code of the norms for peaceful coexistence, but that it is a starting point for further progress through the codification of principles and rules of peaceful coexistence. Moreover it is recognized that the codification of international law has become one of the most important tasks of the United Nations.⁷⁵

4. *Permanent Principles (Peaceful Coexistence)*

The program of the Communist Party of the Soviet Union, as adopted by the XXII Congress, listed the following principles as part of the concept of peaceful coexistence which was declared to be the basic principle of international law and international relations at the present time:

“Denunciation of war as the method of settlement of disputes between nations, and their solution by means of negotiations; equality of states, mutual trust and understanding between states, consideration of mutual interests; nonintervention in internal affairs, and recognition of the right of each nation to decide, independently, internal matters of each country; respect for territorial integrity and sovereignty of all states; development of economic and cultural cooperation on the basis of full equality and mutual advantage.”⁷⁶

These principles are currently accepted by Soviet scholars as permanent rules controlling conduct of governments and determining the legality of their actions. This in particular affects the making of treaties, the main source of international law.⁷⁷

5. General Principles

General principles of law were traditionally considered by the Western scholars of international law as one of the sources of law which the Court could use in order to expand the body of rules it applied in international litigation and also by way of precedent to expand the system of international law. The Soviet acceptance of the Statute of the Court was not understood as indicating that the Soviet Union accepted the system of sources of international law as listed in the provisions of article 38. Furthermore, it is a considered and uniform opinion of Soviet scholars that the real meaning of article 38(c) is that “general principles of law” are understood as “general principles of international law.” Specifically, Soviet scholars point out that in a world consisting at this time of two opposed world systems, there are no such general principles, except those established by international agreements as part of international law.⁷⁸

Professor Tunkin in his Hague Lectures on Co-existence and International Law⁷⁹ admitted the usefulness of the general principles as defined in the Statute of the International Court of Justice. He denied, however, that there were legal principles common to all states, because the world is divided into two camps, although there could be common legal notions reflecting the general features of legal phenomena:

“But in spite of this, general principles of different legal systems are of importance to international law. They exercise a general influence on the development of international law and they influence it also in a direct way, being material for creating norms of international law through custom or treaty.” Professor Tunkin claims the nature of these principles is different, although they may resemble general principles of municipal law.⁸⁰

6. Soviet Domestic Law and International Law

According to the provisions of the Principles of Civil Legislation and of the Principles of the Civil Procedure of the USSR and the Constituent Republics,

in cases of conflict between an international treaty and the Soviet federal legislation the rule of the treaty shall prevail. It will not prevail against the Constitution of the Union, nor against those of the Constituent Republics.

Although stated so belatedly in the history of the Soviet Union, the principle of the supremacy of a treaty, as stated above, seems to have been practiced even before its formal promulgation. That it was not always so and that at times serious doubts existed in this area was proven by Vyshinski's position expressed during the debate of the thirties. He pronounced himself in favor of the superiority of Soviet municipal law over the force of international law, international treaties included.⁸¹

This doctrine, while appropriate at the time of relative isolation of the Soviet Union, reduced international law to little more than a reflection of internal policy and could not survive during the period of broad Soviet involvement in the life of the international community following World War II. The condemnation of this view had to await not only the death of Stalin and Khrushchev's resulting attack upon his policies, but also a systematic reappraisal of the effects of the cult of personality in various branches of Soviet life. For understandable reasons of political priorities the jurisprudential consequences of the errors of Stalin and Vyshinski were not very high on the list. The 1957 edition of *International Law*⁸² was the first to introduce a change in Vyshinski's hierarchy of sources, stating that both international law and the Soviet municipal system had the same force. The 1960 edition of *International Law* (in English) condemned the doctrine of primacy of municipal law as typical of the period of German imperialism, thus indirectly condemning Vyshinski.⁸³ A few years later Vyshinski was openly accused of being a follower of Triepel's doctrine of the primacy of municipal law.⁸⁴

At the same time, Soviet scholars uniformly condemned the doctrine of the primacy of international law as an imperialist attack upon the sovereignty and independence of nations.⁸⁵ They also rejected the doctrine of dualism as too formalistic.⁸⁶ Rejecting both approaches Soviet scholars suggested a different theoretical solution, possible only because of the special character of the Soviet state. As one of the Soviet authors put it:

"In the practice of the Soviet Union and of the countries of people's democracy, conflicts between rules of international law and those of the internal statutes are not possible. Socialist states, while strictly observing international law, can neither impose nor accept obligations which would be contrary to the principles of internal law of the contracting parties. On the other hand, while strictly observing international agreements, they are unable to enact provisions of municipal law, which would be contrary to international agreements."⁸⁷

Thus, Soviet authors affirm formal equality of international treaties with the federal statutes in the territory of the Soviet Union and their precedence over the statutes of the constituent republics.⁸⁸

During the subsequent years Soviet scholars quite realistically acknowl-

edged the possibility of conflicts between a federal statute and an international treaty. In this case a later statute would prevail over the international treaty.⁸⁹

B. *The Doctrine of Sovereignty*

1. *First Claims*

The modern tendency in the jurisprudence of international law, though not in diplomatic correspondence and documents, is to substitute for sovereignty the notion of jurisdiction in international and internal relations. The purpose of this terminological change is to avoid the imprecise and fetishist significance of the term of sovereignty, which no longer corresponds with reality. The Soviet Union has found new uses for the term "sovereignty" precisely because of its indeterminate content.

Sovereignty is an attribute of personality in international law. It also denotes the highest authority on the territory of the state. In its first sense, sovereign is a state which is a member of the international community, able to assume rights and obligations in international law, and whose capacity to represent its interests in international relations is not circumscribed more than that of other members of the international community. In this sense sovereignty implies a notion of equality. It is also a situation in which a state has the right to control internal relations affecting the population within its territory and is not restricted, in this sense, by the similar right of any other state affecting the condition of its territory or population.

From the beginning of its existence Soviet government claimed extensive powers both to reorganize its social and economic order and to determine the extent and the scope of its international obligations. It claimed the right to interfere with or even abrogate property rights of foreign nationals and to determine their role within the national economy of the Soviet state. It also demanded freedom to continue in force or to reject international treaties, conventions, foreign loans and other financial obligations. These powers were not claimed in connection with the sovereign rights of the Soviet Union, but rather they were presented to the outside world as a consequence of the unique position of the Soviet Union resulting from the social and political nature of the October Revolution.

Chicherin's appeal to the other states assembled in the Genoa Conference in 1922 for the recognition of the uniqueness of the October 1917 revolution followed a claim for exceptional powers by the Soviet government in the internal and international affairs of Russia.⁹⁰ Later, however, this line was abandoned, and the Soviet science of international law refers to sovereignty as a well-established concept, a key institution of traditional international law. Its prime function is to protect socialist states from interference in their internal affairs by the capitalist countries:

“Sovereignty is a reliable means of defending the small states from the major imperialist powers’ attempts to subjugate them to their dictate.

The creation of aggressive blocs, the building of military bases abroad, intervention in the internal affairs of other countries and the suppression of the national liberation movements are all aggressive actions which are incompatible with the sovereignty of States and peoples.”⁹¹

2. *Attribute of Sovereignty as an International Personality*

The basis of the concept of sovereignty is the notion of the international personality of that social complex which claims recognition under international law. Sovereignty has the attribute of distinguishing participants in international commerce. Thus Korovin wrote in his first edition of *International Law of the Period of Transition* that sovereignty was the right to self-determination (meaning also the choice of social and economic order and not only of statehood). He further states that the Soviet political and juristic position in this regard was dictated not only by “respect for the objective correctness of this or any other principles, but also by the real interests of Russia as a socialist state . . . While the general movement of the evolution of the European international law was towards restriction of the notion of sovereignty . . . Soviet Russia appeared to be a champion of the classical conception of sovereignty.”⁹² In his other works, Korovin further came out in favor of the doctrine of the equality of the states small and large and against the principle of majority vote decisions in international conferences. He therefore stated that the Soviet Union, as the only socialist country in the world, was interested in underscoring the individualistic aspects of organization of the international community.⁹³

This notion of sovereignty, as denoting a certain historically justified principle determining the degree of social cohesion in the international community, still has currency among the Soviet scholars, who until the present time have remained firm partisans of the classical notion of sovereignty.⁹⁴ Soviet scholars reject the claim advanced by some Western scholars that sovereignty as a concept determining international relations has outlived its usefulness. This attitude, Soviet scholars claim, is a subterfuge to justify intervention in the internal affairs of the weaker states, to continue colonial oppression, and to prevent national liberation of suppressed nations.⁹⁵

The Soviet doctrines of national sovereignty are connected with two elements. First, the state is a historical organization of national existence. The second is the social function of state power, which is an instrument serving the ruling class in order to maintain desirable socio-economic relations. Nations enjoy sovereign rights and are persons in international law irrespective of their social or economic order. Socialist and capitalist states are equally sovereign; as such they are equal members of the international community.

According to the early views of Soviet scholars, the circle of persons and

organizations with membership status under international law was much broader. Korovin accorded sovereign rights and international personality to the Pope, Communist International, International Union of the Trade Unions, International Trading Companies, nations without states, wandering tribes and savage nations. Korovin's views were shared originally by Pashukanis.⁹⁶

The majority of Soviet scholars were opposed to these exaggerated claims of Korovin and Pashukanis. Sabanin and Hrabar, in particular, asserted that in practice only states are members of the international community controlled by international law.

Following the first Conference of Soviet jurists (1929) both Korovin and Pashukanis changed their views. Pashukanis in his system of international law (1935)⁹⁷ reversed himself and recognized that only states are members of the international community. The state was not identical with the ruling class or the ruling party, even if this party is the Communist Party. The Soviet state must not be identified with the Comintern and must not be held responsible for its activities.

The final form of this doctrine of international personality and the meaning of sovereignty was given by Vyshinski. Sovereignty was both external and internal independence of the state from any foreign power.

During the following years, the general tendency was to emphasize further the function and the role of the concept of sovereignty in international law. The state was the only historical formation that was sovereign, in the sense of having the legal and factual supremacy of its power within its territorial jurisdiction.

The problem of the position, under international law, of the nation without the state was raised by Korovin in the 1951 edition of the *Mezhdunarodnoe pravo*. He again acknowledged that sovereignty was an attribute of states and nations. This, however, raised objections so that in 1954 Korovin interpreted the concept of national sovereignty as denoting the right of each nation to self-determination.⁹⁸

The discussion which began under the regime of Stalin developed further after his death. Scholars began to take account of the new international position of the Soviet Union, its participation in several international organizations, and of the fact that the Soviet Union was party to a great number of treaties, which presumed a behavior according to obligations assumed in these treaties. In his textbook of 1956 Tunkin wrote: "When we speak of the sovereignty of the state in its international aspect, we do not understand it as some 'absolute sovereignty' or an 'unlimited freedom to act.' Sovereignty of a state in international relations is a real independence of states which is not unlimited."⁹⁹

While this realistic approach began to dominate the Soviet science of international law, at the same time the right of each nation to statehood and self-determination was also linked to sovereignty and international personality.¹⁰⁰ Tunkin understood the sovereign right of a nation to self-

determination as anticipatory to the creation of a state or to the disposal of its destinies in some other manner, such as merging with other nations in order to establish a union which will not give it the status of a separate member of the international community. Eventually, following the XXII Party Congress (1961), Zadorozhnyi and Kozhevnikov came out with a resolute condemnation of Vyshinski's conception of sovereignty stating that nations may also be subjects of international law.¹⁰¹

With the appearance of peaceful coexistence as the basic principle of international law, the restriction of the concept of absolute sovereignty was even more necessary. Sovereignty was limited by the fact that principles of peaceful coexistence determine the legality of a state's actions. The 1964 Academy of Sciences edition (Kozhevnikov) of the *Mezhdunarodnoe pravo* declared that:

"The concept of absolute sovereignty . . . is incompatible with . . . international law of the present . . . Proclaiming unrestricted sovereignty of one state and thereby rejecting sovereignty of all other states is in effect rejection of sovereignty as a principle of international law."¹⁰²

3. *Equality of States*

The essence of the concept of sovereignty is the equality of members of international community, in the sense that the internal regime of any state's territory is as independent as that of the largest and the most powerful state, and that any state has full capacity to act in international relations. As the Levin-Kaluzhnaia (1964) edition of International Law stated:

"Sovereignty is supremacy of a state within its own territory and independence in international affairs, without, however, violation of the rights of other states and the generally accepted principles of international law. Sovereignty does not mean arbitrary rules or freedom to violate the principles of international law and international obligations. A violation or arbitrary unilateral denunciation of obligations undertaken cannot be justified by the invocation of sovereignty."¹⁰³

Respect for the sovereignty of other states is reflected in the principle of equality of states, which in socialist international relations is understood as equality not only in the formal political sense, but also in terms of economic development.¹⁰⁴

However, equality in international relations does not exclude, in certain situations, the possibility of leading powers imposing their will upon other members of the international community resulting in a forcible restriction of their sovereignty. Such actions are justified where there is aggression by one state against any other member of the international community. Here the question of the legality of the Potsdam and the Yalta agreements, primarily demonstrated by the decisions concerning Germany, is used as an example of permissible exceptions to the strict principle of equality.

The original explanation of the Allied decisions concerning Germany

made at Yalta and Potsdam was that these decisions were temporary limitations on sovereignty in the interest of peace and international security. Professor Levin compared these decisions to temporary deprivation of freedom of a criminal in the interest of other citizens. Thus those agreements were not restrictions of sovereign rights of the German nation and of its right of self-determination.¹⁰⁵

Another Soviet author asserted that the "occupation of Germany had concrete aims and assured the sovereignty of the German people."¹⁰⁶

The eventual emergence of two German states was, according to Soviet authors, a realization of those rights of the German nation.¹⁰⁷

While sovereign rights include the inviolability of the integrity of state territory, the Soviet interpretation does not call for the preservation of the status quo. Within the Soviet Union territorial adjustment and change in status from that of a constituent republic to that of the lower territorial category was a frequent and indispensable method of adjusting the existing territorial divisions to changes in ethnic structures. Consequently, Soviet scholars also recognize a possibility of territorial adjustments in order to give effect to the conflicting principles of national self-determination.¹⁰⁸

4. *Sovereignty, Socialist International Law, Socialist Internationalism*

Soviet ideas as to the legal nature of ties binding the new socialist states with the Soviet Union have gone through two phases separated by the death of Stalin. The 1947 declaration of the Conference of the Nine Communist Parties in Poland on the emergence of the new socialist states, and the division of the world into two camps, viz the socialist system with the Soviet Union in its head and the imperialist system with the United States as its leader, was only the first step in the march of the new socialist nations towards the realization of socialism in internal and external relations. Soviet scholars unanimously developed the idea that the future of the new socialist states lay in a closer association with the Soviet Union. Professor Levin pointed out that one of the fundamental tenets of Marxism was that international relations represented an extension of internal relations. He expressed the belief that international relations among the socialist states should follow the patterns of "internal relations" established within the Soviet state.¹⁰⁹

Korovin, describing in this regard the principles of the Stalin Constitution of 1936, asserted that it created a form of government which provided a model for the future community of nations. "The Soviet state represents the living prototype of the future union of nations in a single world economic union."¹¹⁰

Another Soviet scholar assured the Soviet and presumably foreign audiences that the Soviet Union had devised various forms of association providing for gradation in the self-governmental status of various national groups belonging to the Soviet Union. Each form of statehood within the

union corresponds to the size of the national group and its cultural development. At the same time, the Soviet scholars explain that the forms of national organization and degree of national autonomy have no bearing upon the national sovereignty and the real freedom and independence of each national group. Although Soviet laws make distinctions among the degrees and forms of national organization mainly in geographical terms—such as area, region, autonomous republic, and finally the union republic—self-government of the people and real sovereignty of the state over its affairs are always identical.¹¹¹

Kozhevnikov developed this idea further in a Polish legal journal. According to him the Soviet Union developed as a union of various nations, which had been a part of the former Russian Empire, and included even those beyond the limits of imperial Russia by means of compacts with the nations concerned. Sometimes, however, the association of new territories with the Soviet Union took the form of direct annexation. Nevertheless, Kozhevnikov asserted that Soviet annexation differed profoundly from imperialist annexations. "Joining territory to the Soviet Union in application of socialist principles, i.e., in the interest and with the consent of the working masses of these territories, is a totally legal, perfectly natural process, as it assures the population of these territories a quick economic development, a full growth of national culture, and increases their security, contributing at the same time to the increase of power of the great Soviet Union, and thus is in the interest of the working masses of the entire world. The Soviet Union may, if it is necessary, place on the agenda the problem of the frontiers of a state which threatens its territorial integrity as was the case with Finland in 1939 . . . and so a territorial question—in view of the security of the USSR—may be resolved by resorting to a just war, which is regarded as a utilization of self-defense for the socialist state. We must stress, however, that the annexation of territory into the Soviet Union, even in this case, had nothing in common with the acquisition of a foreign territory."¹¹²

Historical events have not favored the application of the initial ideas advanced by Soviet scholars, and new socialist nations retained their separate statehood and membership in the international community. A confirmation of their independent status came after the October 1956 events in Poland and Hungary in a series of interparty meetings which established new principles of cooperation on the international and interparty levels. The basic principle which was said to inspire relations between the Soviet Union and other socialist states was "proletarian internationalism" (used for the first time in the October 1956 declaration). It was changed to "socialist internationalism" in order to reflect the fact that this is a principle of cooperation between the socialist states and the ruling parties.¹¹³

A typical example of a statement describing mutual relations of the socialist countries in Eastern Europe was the declaration of the Communist and Worker's Parties which met in the summer of 1962:

"The Commonwealth of socialist countries realizes its goals through the

comprehensive political, economic, and cultural cooperation. In this, all socialist countries are strictly guided by the principles of full equality, mutual respect for independence and sovereignty, fraternal mutual aid and mutual advantage. In the socialist camp nobody has or can have any special rights or privileges. The observance of the principles of Marxism-Leninism and socialist internationalism is an indispensable condition for the successful development of the world socialist system.”¹¹⁴ ✓

Because the idea of direct incorporation of the socialist states proved to be impractical, Soviet scholars turned to socialist international law, which they reasoned could still serve as the legal basis for closer ties between socialist states, including the Soviet Union. Kozhevnikov was the first to assert that socialist international law was a possible category for the regulation of relations between socialist states.¹¹⁵

The idea of the socialist legal order was then reaffirmed in the 1951 and 1957 editions of *Mezhdunarodnoe pravo*. A closer definition of the legal framework of the international cooperation of the socialist states had to await expansion of the doctrines of international law in connection with the doctrines of peaceful coexistence. Peaceful coexistence was declared to be the basis for relations with the capitalist countries and developed into a system of permanent principles. The same was done for the proletarian (socialist) internationalism.¹¹⁶

Socialist internationalism was declared by the Soviet scholars as not incompatible with the principle of state sovereignty.¹¹⁷ The basic difference between the capitalist and socialist concepts of sovereignty, it was argued, was that while the former is divisive the latter is unifying. Sovereignty was exercised not only to afford protection to each separate state, but also primarily to subordinate the interests of individual states to those of the socialist system.¹¹⁸ The cooperation of the socialist states was directed towards the creation of a larger economic organism of the entire system of the socialist states. It involved fraternal mutual assistance, socialist international division of labor, exchange of information concerning state and economic organization, coordination of economic plans and specialization to benefit the entire area.¹¹⁹

Relations between the members of the Socialist Commonwealth were described in glowing terms as representing a situation in which a high degree of sovereign status was combined with fraternal cooperation between socialist states. The Socialist Commonwealth as a whole was one of the most important forces of progress in addition to spreading the new conception of relations between other members of the international community. This in particular applied to the new members of the international community. Relations between socialist countries found an extension in the forms of assistance rendered to the decolonized countries. In 1960 Korovin wrote:

“The principles of proletarian internationalism . . . determine the relations of socialist states among themselves, the relations of these states which have been or are being liberated from colonialism . . .”¹²⁰

Although this new type of international relations between the socialist countries made for a high degree of cohesion, nevertheless the methods of cooperation were compatible with principles of independence and sovereign status. This in particular applied to the organizations of the socialist commonwealth which, in terms of the principles of their organization, compared with the international organizations of the world at large.

One of the experts describing the work of the Council for Mutual Economic Aid wrote:

"The relations between members of Comecon are based upon the principles of sovereignty and non-intervention. Fraternal mutual assistance, formulated as the principle of socialist internationalism in November of 1957 by the Declaration of the Representatives of Communist and Worker's Parties of the Socialist Countries, is the basic element of their relations."¹²¹

"Comecon should not be looked upon as some sort of supranational organization where the majority imposes its will upon the minority."¹²²

A recent Soviet treatise on international law described relations between the members of the Comecon as follows:

"The Council for Mutual Economic Assistance organizes and directs the mutual economic collaboration of the European socialist countries, improves its forms and methods on the basis of genuine equality, mutual advantage and respect for the sovereignty of all the participating countries. The activity of the Council — an example of the new type of international relations among the countries of socialism — is permeated by the principle of proletarian internationalism, mutual trust and comradely mutual assistance."¹²³

The most recent trend in describing relations between the socialist countries tended to stress the political rather than the legal basis of their intimate relations. Consequently there is a full parallelism between the general international law and the law in force among the socialist countries.

"Socialist international law does not contradict general international law: rather in reflecting the special nature of the relations between socialist states, it broadens and deepens the democratic character of general international law."¹²⁴

This modern attitude contrasts sharply with the original ideas of the Soviet jurists as to the nature and content of the future international law of the socialist community of nations. Present day experience finds that socialist states rely in their relations, where they are regulated by the law, on principles quite similar to those relied upon by the capitalist states. Thus indispensable superiority of relations between the socialist states is relegated to the political and ideological realm.

In fact, from the Soviet viewpoint, the present socialist system of states represents a ready framework for the reorganization of the entire world upon new principles, although neither the status of individual countries nor the legal system regulating their cooperation require a fundamental change. As two Soviet jurists have explained:

"Socialist principles and norms related to the principles and norms of

general international law as a new and higher quality does to an older quality. As is the case with every higher stage of development, they constitute not a naked negation of the generally recognized principles of international law, but negation as a moment of connection, as a moment of development, with retention that is positive . . . While they incorporate positive factors and go further than the principles and norms of general international law in assuring friendly relations among states, the socialist principles and norms do not conflict with general international law.

The existence of principles of internationalism and other socialist principles and norms in the relations between countries of the socialist system in no way contradicts the need of a general international law."¹²⁵

The position of the two Soviet jurists, which still conforms to the official stance of the Soviet leadership, accepts the dychotomy of the international law system, and comes nearest to the original position of Tunkin (1956). Tunkin advanced the idea that there was one system of international law during the period of peaceful coexistence, and that it was experiencing a gradual transition from the positions of the capitalist and free economy to the position of accepting the claims of the socialist states addressed to the international community and to the law which governs it. The modern community of nations accepted the fact that contemporary international law may contain contradictory rules and principles. In regard to its function, it is historically a single and complete system of legal rules, changing in measure as the world community seeks its way towards a more perfect system of peaceful organization for the coexistence of nations.

The presence of two standards in determining the legal position of the socialist states was confirmed by the Czechoslovak case. Invasion and military occupation of the Czechoslovak Republic in order to prevent planned economic and political reforms opposed by the Soviet and the other Warsaw Pact governments are represented as not contradicting the legal status of a sovereign socialist state as explained by *Izvestia*:

"Peoples of socialist countries, and their communist parties have undoubtedly, and must have, the freedom to determine the development of their countries. However, their decisions must not harm the cause of socialism in their countries, the basic interests of other socialist countries and the world workers movement which struggles for socialism. This means that each communist party is responsible for its actions not only to its people but also to all socialist countries and to the entire communist movement. Those who forget it, and emphasize only the autonomy and independence of the communist parties, fall into onesidedness and reject their international obligations."

Formalistic respect for the principle of self-determination of nations —*Izvestia* continued—would guarantee the freedom of self-determination not to the masses but to their enemies, leading to the loss of Czechoslovak independence. Intervention of the five socialist countries was a practical act in defense of the Czechoslovak sovereignty in its substantive meaning. At the

same time, the article confirms, outside the socialist commonwealth the formal concept of national sovereignty, which prohibits the so-called "export of the revolution" is the principle of international law in force.^{125a}

5. *Unequal Treaties*

The doctrine of unequal treaties was directly linked to the principle of the equality of sovereign states. States could not be forced to accept obligations contrary to basic principles of international law, particularly the principle of peaceful coexistence.

"In the first place the validity and force of treaties depended upon their being a free expression of the will of the parties . . . In the second place no treaties could contradict recognized principles of international law."¹²⁶

While states had the power to make treaties, "their object can be only that which is legitimate and capable of fulfillment."¹²⁷ Furthermore, "The principle that international treaties must be observed does not extend to treaties which are imposed by force and which are unequal in character. Such treaties contradict international law and hence cannot enjoy its protection. Their repudiation cannot be considered a violation of the principle that international treaties must be observed."¹²⁸

A special category of illegal treaties were unequal treaties which were widely used in relations between the imperialist powers and colonial and dependent nations. The opposite were the treaties in force between the socialist countries, expressing the will not only of the official governments of those states, but also that of the broad popular masses.¹²⁹

An example of an unequal treaty is one which provides that one state has the right to exercise power on the territory of the other, such as agreements permitting establishment of foreign military bases, collective security agreements between the capitalist states, and economic assistance agreements.¹³⁰

Treaties which were concluded contrary to international law were without legal force. This applied to those treaties which were not a free expression of the will of the parties. They have no effect and a party forced to accept a treaty against its free will is not bound by its provisions.¹³¹

As a matter of course the principle "*clausula rebus sic stantibus*" did not apply to unequal treaties, as its application was restricted to treaties which have acquired legal force. And yet it was possible that a treaty which was valid at one point in time had become an illegal and unequal treaty because a change in circumstances made these treaties contrary to the general principles of international law. It was possible to imagine situations where a valid treaty had become, through the change in international relations, an unequal treaty. Such treaties are liable to denunciation according to the same general principles.¹³²

As the Soviet Union and socialist states conduct foreign policy based upon respect for sovereignty, economic independence and territorial integrity of

other countries, they are by definition precluded from making unequal treaties. The very fact that a socialist state participates in a treaty is conclusive evidence that this is an equal treaty and does not contain enslaving stipulations. Even treaties with capitalist states are based on mutual advantage and take into consideration the interests of all parties involved.¹³³

6. *The Doctrine of Self-Determination* ✓

In the Soviet pattern of the world revolution an important place belonged to national aspirations of the subjugated and colonial nations. It was thought that the realization of these aspirations would weaken imperialistic capitalism, would be a step towards emergence of the socialist order within new states, and would provide a basis for the consolidation of the international proletarian movement. Eventually old and new states were expected to move towards fusion into a single economic cooperative on a world-wide scale.¹³⁴

It was Lenin's viewpoint that interests of socialism stand above the rights of nations to freedom and independence. According to Stalin, as the Soviet state was taking shape self-determination was to be promoted according to how it served the interests of the world revolution. Nations which form a part of foreign empires should be encouraged to gain independence. Self-determination of the peoples of Russia should be directed towards union with the great Russian people.¹³⁵

During the first phase in the development of the Soviet state, Soviet internationalists followed the pattern indicated by the ideological leaders of the Soviet state. They described with approval the process of the integration of the nationalities, which once belonged to the Russian empire, into the Soviet state; and they found a good deal to criticize in the solutions adopted at the Peace Treaty of Versailles. Korovin, who recognized classes as real subject of international law, supported the right of peoples to self-determination and was opposed to Czechoslovakia's acquisition of territory with an important German population. He favored the joining of Austria to Germany.¹³⁶

Soviet legal literature continued to develop the doctrine of self-determination as an attribute of each nation's statehood and sovereign status, leading, in the final analysis, to formal recognition on the basis of the sovereign status of each nation.¹³⁷ At the same time Soviet scholars defended Soviet annexations effected during World War II in collaboration with Germany and later with the Western Allies without ever consulting the people involved. The theory was that annexations of various territories in Finland, Poland, Romania, etc., were made in order to strengthen the Soviet Union and were justified because they served the cause of peace and the cultural interests of the population.

Following the death of Stalin and Khrushchev's rise to power, Soviet internationalists turned their attention to the question of the emancipation of

colonial peoples. Here two aspects of liberation and self-determination are to be distinguished. One is a formal attainment of statehood. The other is the achievement of full control over a people's destiny, including control of its economic development. In this context the Charter of the United Nations, the appropriate resolutions of the United Nations concerning the emancipation of colonial peoples and the right to nationalize a people's economic assets came in for a good deal of attention from Soviet scholars.¹³⁸

It was asserted that the Charter of the United Nations constituted a central agreement laying down the foundations for the peaceful coexistence of the two systems by which the principle of self-determination of nations, providing for the liberation of all nations, would play an important role.

Following the armed intervention of the Warsaw Powers in Czechoslovakia in August 1968 the right of self-determination was reformulated in the sense that it may be exercised only to promote the cause of socialism, which precluded the change of the regime in a socialist country, from that of a socialist country, to that of a democracy in the traditional sense.^{138a}

C. Theoretical Genealogy of Soviet International Law Doctrines

1. Terms of Reference

In the opinion of Soviet scholars Soviet doctrines of international law are in no way indebted to the theoretical trends, philosophical or jurisprudential, that have influenced juristic thinking in the free world. Soviet scholars are partisan to neither the monistic or dualistic schools of international law. They reject the doctrine of the supremacy of domestic law over the international legal order (Triepel) and likewise reject the theory of the supremacy of the international legal order (Kelsen). They also reject all suggestions that they may be inspired in the international law system-building by the theories and philosophies of positivism, or of natural law. The official axiom as regards the source of ideas which have inspired Soviet concepts of international law is that these ideas are to be found in Marxism-Leninism and a materialistic interpretation of history.

This view seems to be contradicted by the fact that in the discussions among Soviet scholars even the most eminent among them are found to be guilty of non-Marxist views, and indeed they show signs of succumbing to the influence of the alien science of international law whose theories are born in the capitalist environment. The list of detractors is a long one including at one time or other Stalgevitch, Levin, Vyshinski, Pashukanis, Kozhevnikov, Krylov, Korovin, Rapoport, Tunkin and a host of minor ones, both in the role of accused and prosecutors.

An important aspect of the process of distilling the current Soviet policy line in the field of legal science is recognizing that these charges and counter-charges were essentially correct. Soviet scholars continue, practically all the

time, to be under the influence of Western legal science in general, and international law in particular, as international law was a product of the Western tradition and is, moreover, a part of the Western cultural experience.

Before Soviet doctrines are examined in terms of their relevance as an extension of Marxist philosophy, it is essential to review certain structural characteristics of Soviet thought in the field of international law.

The first question is what is the place of international law in the general system of rules of law governing various aspects of human relations.

There are two basic trends prevalent among scholars of international law. One of them, a less theoretical one which is influenced by historical antecedents, sees the theoretical answer to this problem in the direct relationship existing between the legal rule and the state, which is the originator of the legal rule. Conditions in which internal and international rules of law are rooted differ profoundly. Historically, they have affected different social environments, and their force rested on different foundations. It is traditional, therefore, to see international and internal law as two separate and independent realms of the legal rule.

This view is further reinforced by the fact that in not all jurisdictions international law, or even international treaties, are considered part of the domestic law, and by the fact that usually some kind of process is required in order to make international law a part of the rule directly enforceable in domestic relations. The dualistic school also reflects the fact that constitutionally there is usually a division of responsibility as to the law making process in each of these fields of legal regulation. The monistic tendency is paradoxically more ancient and more modern. In the form developed by the canonists (the school of natural law), it represented that trend of legal thought which was directly connected with the legal tradition of Rome. It also stood at the cradle of the modern state and modern law as it grew from the emancipation of the modern man and the emergence of the modern nation in France and the American continent. The rights of man and of the nation were rooted in the same set of natural causes. It made the man the center of the social and legal system. The natural school of international law sought to establish a rule of law in international relations by recognizing the right of infidels and heretics to be members of the international community. In due course this trend produced a great school of natural law with Gentile, Grotius, Pufendorf, Leibnitz and others, who sought to restrict the right of the sovereign to resort to war.

Another trend of the monistic school is of a more modern origin and is linked with the conviction that the state, as a supreme authority, has the right to make laws and to meet its needs. This scientific positivism eventually produced two viewpoints. One sees the center of legal order in the state itself and propounds the doctrine of the supremacy of internal law. The other sees the world legal system as a rationalistic pyramid, with international law as the highest norm to which all other kinds of law are subordinated. Furthermore, there is a trend in the monistic outlook that is less speculative

in character. It is convinced that in reality the human being is the real subject to whom all law is addressed; moreover, man is an active agent within the legal order of the state and within the international law sphere. Adherents of this school point out that in reality the state protects its interests as they are identified with those of its nationals, and that it is an agent rather than a principal in international relations.

2. *Dualistic Concept of International Law in Soviet Science*

Soviet doctrine examined in terms of these choices seems to belong first of all to the dualistic tendency. International and municipal law comprise two separate provinces of law and remain in no hierarchical dependence upon each other. This statement is certainly true in terms of the Soviet system of property relations and the Soviet monopoly of foreign trade, which makes the Soviet state the only juristic entity which participates in international commerce either as a subject of international law or as a holder of private rights. In order to be able to maintain relations with the outside world, the Soviet state must maintain a strict division between situations, some of which make it appear in its sovereign capacity, while others make it a partner in economic transactions which are of private law character. As Professor Lunts wrote in defense of the system which made foreign trade and conflicts of laws a part of the private law system:

“Foreign trade agreements which regulate general conditions of trade must be distinguished from transactions between Soviet foreign trade organization and individual firms abroad involving delivery of goods or exchange of services. The first category of agreements clearly belonged to public international law. The second category of agreements involved firms and economic organizations which were, juristically speaking, not a part of the state.” Furthermore, as Lunts stated “. . . from the political point of view, in the interest of peace and business relations between the states, it is important to have always in mind that litigation arising from civil law relations which contain a foreign element, and particularly litigations related to foreign trade transactions . . . are not international disputes, but disputes of civil law. The occurrence of such disputes, which are quite unavoidable in foreign trade, does not signify the existence of conflict between the countries concerned.”¹³⁹

3. *Elements of Monistic Theory*

In terms of conceptual characteristics the Soviet doctrine of international law is clearly indebted to the dualistic concept. There are, however, elements in Soviet jurisprudence which represent elements of a *sui generis* monistic theory, e.g., the statement that both municipal and international law are the expression of the popular will or that rules of law in either province are an expression of the same policy. However, statements of this type have little

coverage in reality and are not embodied in legal institutions which would give them expression in the process of law-making.

To look for the manifestations of monistic concepts in the theoretical constructs of Soviet jurisprudential writers, two doctrines demand attention. First, was Vyshinski's doctrine regarding the priority of Soviet internal law over international law. It was a borrowing from Triepel who was to be (for some time) an important source of inspiration to Soviet writers. Behind Vyshinski's formulation of the supremacy of Soviet internal legislation over the international treaty was the conviction that in the Soviet situation domestic law was a clearer expression of the public policy of the Soviet state.

The other form of monism is of a somewhat different character and more subtly linked to the basic concepts of Marxism. This form is to be found in the doctrine of the laws of history, which shape both internal and international policy, and internal and international legal systems, in the same sense as they constitute the substantive source of both legal systems. The materialistic interpretation of history includes the theory of the transition from a policy of change to a policy of status quo. Depending upon the current policy line of the Soviet Union, Soviet scholars will underscore either the element of stability or change in the rules of international law. The current Soviet policy line seems to be that realization of the general progress of the human community towards higher forms of social organization is through peaceful means, and this progress is predicated upon the prevention of great wars involving the use of nuclear weapons. In this context international law has become the law of peaceful coexistence and of peaceful change, permitting wars of national liberation and transition from formal to real independence of the former colonial peoples. In the same context Soviet scholars developed the doctrine of the *ius cogens* and the permanent principles of international law which include the principles of peaceful coexistence, self-determination of nations, non-intervention into internal affairs of the sovereign members of the international community and prohibition of unequal treaties, etc., derived from the principle of peaceful coexistence. It thus includes all those principles which foster the dismemberment of colonial empires and which encourage consolidations of the Socialist Commonwealth of Nations and expansion of its influence in the community of nations. These principles are a legal formulation (for the current historical period) of the historical process that is taking place, and in the Soviet view the current historical process is a phase of the movement towards higher forms of social organization—a socialist and eventually a communist society. These principles are endowed with higher force superior to the will of the states, and belong to the category of the permanent principles of international law. Endowed with the force of *ius cogens*, permanent principles cannot be contradicted by transactions between the states.

The doctrine of permanent principles is highly reminiscent of the natural law theory formulated by the canonistic school of law and in the first place by Thomas Aquinas. The real difference between the two theories is that in

the medieval version principles of natural law represented an unchanging and stable category, derived from the immutable laws of nature. In the Soviet form permanent principles reflect the movement of historical change.

NOTES

- ¹ Kurskii, "Blizhaishie zadatchi izucheniia sovetskogo prava," *SG* (1922) No. 1, 3.
- ² Lapenna, *Conceptions sovietiques de droit international public* (1954): distinguished in the history of Soviet science of international law three periods: 1918-1930, 1930-38 and 1938-53; Meissner, *Sowjetunion und Völkerrecht 1917-1962* (1963) accepts the division into four periods. Cf. *Ibid.* 34, for other authors.
- ³ Grzybowski, *Soviet Legal Institutions* (1963) 54-55.
- ⁴ Korovin, *Mezhdunarodnoe pravo perekhodnogo vremeni* (1923).
- ⁵ *Id.*, *Sovremennoe mezhdunarodnoe publichnoe pravo* (1926).
- ⁶ Pashukanis, "Mezhdunarodnoe pravo" *Entsiklopedia gosudarstva i prava* (1925-26) vol. 2, 857 ff.
- ⁷ Sabanin, "Pervyi sovetskii kurs mezhdunarodnogo prava," *Mezhdunarodnaia Zhyzn*, (1926), No. 2, 106.
- ⁸ Hrabar, "Das heutige Völkerrecht vom Standpunkt eines Sowjetjuristen," *Zeitschrift für Völkerrecht* (1928) 191.
- ⁹ Lapenna, note 2, 80-103.
- ¹⁰ Levin, *O burzhuaznykh vlianiakh v sovetskoi mezhdunarodnopravovoi literature* (1930).
- ¹¹ Cf. *Sovetskoe Gosudarstvo i Revoliutsia Prava* (1930), nos. 11-12, 21-22. Korovin admitted his errors in a letter addressed to the editorial board of the *Sovetskoe Gosudarstvo* (1935), no. 4, 171.
- ¹² *Sovetskoe Gosudarstvo i Revoliutsia Prava* (1931), no. 3, 137.
- ¹³ Pashukanis, "K voprosu o zadatchakh sovetskoi nauki mezhdunarodnogo prava," *Mezhdunarodnoe Pravo* (1928), no. 1, 7-15.
- ¹⁴ Pashukanis, *Ocherki po mezhdunarodnomu pravu* (1935).
- ¹⁵ Vyshinskii, "Osnovnye zadatchi sotsialisticheskogo prava," in *Voprosy teorii gosudarstva i prava* (1949) 54-124; Jakovlev, Petrov, "Protiv burzhuaznykh teorii mezhdunarodnogo prava," *Pravda*, April 27, 1937. Cf. also Hazard, "Cleansing Soviet International Law of anti-Marxist Theories" 32 *AJIL* (1938) 244 ff; Maurach, "Zur neuesten Wandlung in der allgemeinen Rechtslehre," im *Strafrecht und Völkerrecht der Sowjetunion*, 4 *Zeitschrift für osteuropäisches Recht N.F.* (1937-38); Meinsser, note 2, 43; Bracht, *Ideologische Grundlagen des sowjetischen Völkerrecht* (1964) 60.
- ¹⁶ *Sovetskoe Gosudarstvo* (1938) no. 5, 119 ff. Vyshinskii, note 15.
- ¹⁷ Cf. Kozhevnikov, "K voprosu o poniatii mezhdunarodnogo prava," *SGP* (1940) no. 2, 100; *Id.* *Uchebnoe posobie po mezhdunarodnomu publichnomu pravu (Ocherki)* (1947) 111; cf. also Kozhevnikov's article on International Law in the Great Soviet Encyclopedia.
- ¹⁸ *SGP* (1939) no. 5, 3-5.
- ¹⁹ *SGP* (1940) no. 3, 9 ff.
- ²⁰ Kozhevnikov, note 17 in *SGP* (1940) no. 2, 110-113 and Rapoport, "Sushnost sovremennogo mezhdunarodnogo prava," *SGP* (1940) no. 5-6, 137-153.
- ²¹ Kozhevnikov, note 17 in *SGP* (1940) no. 2, 106-107.
- ²² *Ibid.* p. 110; Rapoport, note 20, 141 ff.
- ²³ Kozhevnikov, *ibid.* 111. cf. Rapoport, note 20, 139-141.
- ²⁴ Kozhevnikov, note 17, 112, Rapoport, note 20, 139.
- ²⁵ Cf. Krylov, "Borba SSR za osnovnye printsipy mezhdunarodnogo prava," *Uchebnye Zapiski, Akademia Obshchestvennykh Nauk pri CK VKP (b)* (1949) no. 3, 28.
- ²⁶ Rapoport, note 20, 138, 142, 145.

²⁷ Krylov, "Les notions principales du droit des gens (La doctrine soviétique du droit international)" 70 *RCADI* (1947) 407.

²⁸ *Mezhdunarodnoe pravo*, 1947.

²⁹ Kozhevnikov, *Uchebnoe posobie po mezhdunarodnomu publichnomu pravu* (Ocherki) (1947).

³⁰ Levin, *Suverenitet* (1947).

³¹ *Informatsionnoe soveshchanie predstavitelei nekotorykh kompartii v Polshe v kontse sentabria 1947 goda* (1948); Varga, *Izmenenia v ekonomike kapitalizma v itoge vtoroi mirovoi voiny* (1946); cf. *Mirovoe Khoziaistvo i Mirovaia Politika* (1947) no. 3, 11, special supplement; *Voprosy Ekonomiki* (1948) no. 1, 86-92 and *Ibid.* no. 2, 107-116; Farberov, *SGP* (1949) no. 1, 43-44; Kuzmynov, *Bolshevik* (1948) no. 23, 42; Trainin, "Demokratia osobogo tipa," *SGP* (1947) no. 1 and 2; *ibid.* (1949) no. 4, 43-44.

³² Levin, "K voprosu o sushnosti i znachenii printsiipa suvereniteta," *SGP* (1949) no. 6, 33-36; cf. Korovin, "za patrioticheskuiu nauku prava," *SGP* (1940) no. 7, 8-10.

³³ *SGP* (1949) no. 4, 41 ff.

³⁴ Durdenevskii & Krylov, *Mezhdunarodnoe pravo* (1947).

³⁵ Kozhevnikov, "Nekotorye voprosy mezhdunarodnogo prava v svete truda J. V. Stalina: Marksizm i voprosy jazikoznania," *SGP* (1951) no. 6, 25 ff.

³⁶ Korovin, ed. *Mezhdunarodnoe Pravo* (1951).

^{36a} Kudriavcev, *Sovetskaiia Kniga* (1952) no. 1, 80-84.

³⁷ Korovin, "Ob obshchepriznanykh normakh mezhdunarodnogo prava," *SGP* (1951) no. 9, 14-19.

³⁸ Meissner, note 2, p. 122.

³⁹ *SGP* (1952) no. 7, 68 ff. Gaidukov.

⁴⁰ Korovin, "Nekotorye osnovnye voprosy sovremennoi teorii mezhdunarodnogo prava," *SGP* (1954) no. 6, 34-44.

⁴¹ Cf. Meissner, note 2, 55-56.

⁴² "K itogam obsuzhdenia nekotorykh voprosov sovremennoi teorii mezhdunarodnogo prava," *SGP* (1955) no. 5, 48.

⁴³ Tunkin, "Coexistence and International Law," 95 *RCADI* (1958) 59.

⁴⁴ Tunkin, "Novii tip mezhdunarodnykh otnoshenii i mezhdunarodnoe pravo," *SGP* (1955) no. 1, 81-94; Cf. Gasteyger, "Neue Entwicklungen im sowjetischen Völkerrecht," 39 *Jahrbuch für Ostrecht* (1961) 2/1; Hazard, "Soviet Socialism as a Public Order System," *Proceedings of the American Society of International Law* (1959) 3-33; Meissner, "Völkerrechtswissenschaft und Völkerrechtskonzeption der USSR," 5 *Recht im Ost und West* (1961) no. 1; Kulski, "The Soviet Interpretation of International Law," 49 *AJIL* (1955) 518-34.

⁴⁵ Durdenevskii, "Mirnoe sosushchestvovanie i mezhdunarodnoe pravo," *SGP* (1956) no. 7, 3-13.

⁴⁶ Cf. the catalogue of the principles of peaceful coexistence prepared by Minasjan in *SEMP* (1959) 419; cf. Chkhikvadze, Ilyn, "Kodifikatsia printsiipov mirnogo sosushchestvovania," *SGP* (1958) no. 3, 22-30; Korovin, "Piat printsiipov-osnova mirnogo sosushchestvovania narodov i gosudarstv," *Mezhdunarodnaia Zhyzn* (1956) no. 5; Durdenevskii, Lazarev, *Piat printsiipov mirnogo sosushchestvovania* (1957); Zadorozhnyi, "Mezhdunarodno-pravovye printsiipy mirnogo sosushchestvovania gosudarstv," *SGP* (1955) no. 8.

⁴⁷ Tunkin, *Osnovy sovremennogo mezhdunarodnogo prava* (1956).

⁴⁸ Tunkin, "Sorok let sosushchestvovania i mezhdunarodnoe pravo," *SEMP* (1958) 15-42.

⁴⁹ See McWhinney, *Peaceful Coexistence and Soviet Western International Law* (1964) 127-131.

⁵⁰ Tunkin, note 48, 36.

⁵¹ Tunkin, "Novyi tip mezhdunarodnykh otnoshenii i mezhdunarodnoe pravo," *SGP* (1959) no. 8, 81-94.

⁵² Levin, *Osnovnye problemy mezhdunarodnogo prava* (1958).

- ⁵³ *Mezhdunarodnoe pravo* (1960) 12-13.
- ⁵⁴ Blishchenko, *Mezhdunarodnoe i vnutrigosudarstvennoe pravo* (1960) 41.
- ⁵⁵ Bobrov, *Sovremennoe mezhdunarodnoe pravo* (1962) 114; cf. Meissner, note 2, 57 ff.
- ⁵⁶ Shurshalov, "Mezhdunarodnopravovye printsipy sotrudnichestva sotsialisticheskikh gosudarstv," *SGP* (1962) no. 7, 95-105.
- ⁵⁷ Zadorozhnyi, Kozhevnikov, "Sjezd KPSS i nekotorye osnovnye voprosy sovetskoi teorii mezhdunarodnogo prava," *Institut Mezhdunarodnykh Otnoshenii, Uchenye Zapiski, Seria iuridicheskaja*, vol. 10 (1962) 3 ff.
- ⁵⁸ *Ibid.* 23.
- ⁵⁹ Tunkin, "XXII Sjezd KPSS i zadatchi sovetskoi nauki mezhdunarodnogo prava," *SGP* (1962) no. 5, 3-17; *Id.*, "Printsip mirnogo sosushchestvovaniia-generalnaia linia vneshnepoliticheskoi dejatel'nosti KPSS i sovetskogo gosudarstva," *SGP* (1963) no. 7, 26-37.
- ^{59a} *Kurs Mezhdunarodnogo Prava*, vol. 1 (1967) Chkhikvadze Edit.
- ⁶⁰ Grabar (Hrabar), *Materialy k istorii literatury mezhdunarodnogo prava v Rossii* (1958).
- ⁶¹ Pashukanis, *Allgemeine Rechtslehre und Marxismus* (1929), Stuchka, *L'introduction à la théorie du droit civil* (1926).
- ⁶² 45 *Pod Znamenem Marksizma* (1943) no. 7-8.
- ⁶³ Trainin, "Gosudarstvo strogiushchegosia kommunizma, *Izvestia Akademii Nauk SSSR, Otdelenie Ekonomiki i Prava* (1945) no. 5, 7-8.
- ⁶⁴ Levin, Kaluzhnaia, *Mezhdunarodnoe pravo* (1964) 71; Kozhevnikov, *Mezhdunarodnoe pravo* (1964) 45.
- ⁶⁵ *Diplomatičeskii slovar*, vol. 2, 124.
- ⁶⁶ Kozhevnikov, "Sovetskoe gosudarstvo i mezhdunarodnye dogovory," *Uchenye Zapiski (Akademia Obshchestvennykh Nauk pri CK VKP (b))* vol. 1 (1947) 111.
- ⁶⁷ Cf. Pashukanis, note 14, 20.
- ⁶⁸ Levin-Kaluzhnaia, note 64, 19.
- ⁶⁹ *International Law* (1960) 12; Koretskii, *Obshchye printsipy prava v mezhdunarodnom prave* (1957).
- ⁷⁰ *International Law*, note 69, 13. Soviet science of international law also rejects international comity and doctrines of scholars as separate sources of international law, *ibid.* 13-14.
- ⁷¹ Levin, note 52, 6.
- ⁷² Chkhikvadze, "Voprosy mezhdunarodnogo prava na XX sessii Generalnoi Assemblies OON," *SGP* (1966) no. 3, 71.
- ⁷³ Cf. Koretskii, "Pervaja sessia Komissii mezhdunarodnogo prava," *SGP* (1949) no. 8, 12-29.
- ⁷⁴ Lazarev, "K voprosu o kodifikatsii mezhdunarodnogo prava," *SGP* (1950) no. 2, 50-59; Movchan, "O znachenii kodifikatsii printsipov mezhdunarodnogo prava," *SGP* (1965) no. 1, 46-55.
- ⁷⁵ Kozhevnikov, *Mezhdunarodnoe pravo* (1964) 92; Chkhikvadze, note 72, 71.
- ⁷⁶ *Material XXII Sjezda KPSS* (1962); Meissner, *Das Parteiprogramm der KPdSU von 1903 bis 1961* (1961).
- ⁷⁷ Cf. Triska, Slusser, *The Theory, Law and Policy of Soviet Treaties* (1962) 24-25; Minasjan, *Istochniki sovremennogo mezhdunarodnogo prava* (1960); Lukin, *Istochniki mezhdunarodnogo prava* (1964).
- ⁷⁸ Tunkin, *Voprosy teorii mezhdunarodnogo prava* (1962) 147-148. Lukin, note 77, 100. *International Law*, note 69, 12.
- ⁷⁹ Tunkin, note 43, 95.
- ⁸⁰ *Ibid.* 26; cf. Koreckii, *Obshchie printsipy prava v mezhdunarodnom prave* (1957).
- ⁸¹ Vyshinskii, "Mezhdunarodnoe pravo i mezhdunarodnaia organizatsia," *SGP* (1948) no. 1; Strogovich, Golunskii, *Teoria gosudarstva i prava* (1940); Blishchenko, note 54, 190.
- ⁸² *Mezhdunarodnoe pravo* (1957) 36.

- ⁸³ *International Law*, note 69, 14.
- ⁸⁴ Levin-Kaluzhnaia, note 64, 10; see also Korovin, "Likvidirovat posledstva kulta lichnosti v nauke mezhdunarodnogo prava," *Sots. Zak.* (1962) no. 8, 48.
- ⁸⁵ Mironov, "Sootnoshenie mezhdunarodnogo dogovora i vnutrigosudarstvennogo zakona," *SEMP* (1965) 169; *International Law*, note 69, 10, 15; and Levin-Kaluzhnaia, note 64, 10-11.
- ⁸⁶ Levin, "Problema sootnoshenia mezhdunarodnogo i vnutrigosudarstvennogo prava," *SGP* (1964) no. 7, 86.
- ⁸⁷ Levin, note 52, 125-26.
- ⁸⁸ Blishchenko, note 54, 176-181.
- ⁸⁹ Grevtsova, "Mezhdunarodnii dogovor v sisteme istochnikov sovetskogo vnutrigosudarstvennogo prava," *SEMP* (1963) 179; Cf. Ramundo, *Peaceful Coexistence* (1969) 40.
- ⁹⁰ Cf. *supra*.
- ⁹¹ *International Law*, note 69, 97.
- ⁹² Korovin, note 4, 45.
- ⁹³ Korovin, "K peresmotru osnovnikov poniatii mezhdunarodnogo prava," *SG* (1925) no. 6, 30.
- ⁹⁴ Cf. Chakste, "Soviet concepts of State, International Law and Sovereignty," *43 AJIL* (1949) 31; *International Law*, note 69, 97; Tunkin, note 78, 203-04.
- ⁹⁵ Tunkin, note 78, 203.
- ⁹⁶ Pashukanis, note 6, 857.
- ⁹⁷ Pashukanis, note 14, 16.
- ⁹⁸ Korovin, note 40, 38.
- ⁹⁹ Tunkin, note 47.
- ¹⁰⁰ note 82.
- ¹⁰¹ Zadorozhnyi-Kozhevnikov, note 57.
- ¹⁰² *Mezhdunarodnoe pravo* (1964) 166-77; cf. also Ushakov, *Suverenitet v sovremenom mezhdunarodnom prave* (1963); Calvez, *Droit international et souveraineté en URSS*, Paris.
- ¹⁰³ Levin-Kaluzhnaia, note 64, 100; *International Law*, note 69, 96-97.
- ¹⁰⁴ Shurshalov, note 56, 104.
- ¹⁰⁵ Levin, "Sovremennoe mezhdunarodnoe pravo," *Izvestia Akademii Nauk (ekonomika pravo)* (1946) no. 4, 267 ff., 271, 272.
- ¹⁰⁶ Anisimov, "K voprosu o suverenitete Germanii," *SGP* (1949) no. 5, 13-20.
- ¹⁰⁷ Meissner, note 2, 86.
- ¹⁰⁸ Ushakov, "Poslanie N.S. Krushcheva i mirnoe uregulirovanie territorialnykh sporov mezhdru gosudarstvami," *SGP* (1964) no. 5, 6-7.
- ¹⁰⁹ Levin, "O sostave i poniatii sovremennogo mezhdunarodnogo prava," *SGP* (1947) no. 5, 8.
- ¹¹⁰ "O mezhdunarodnom znachenii Stalinskoi konstitutsii," *SGP* (1951) no. 2, 15.
- ¹¹¹ Kozhevnikov, "Stalin ob osnovnykh printsipakh mezhdunarodnogo prava," *SGP* (1949) no. 12, 90.
- ¹¹² Kozhevnikov, "Twórcza rola ZSSR w slusznym rozwiazywaniu zagadnien terytorialnych," *Panstwo i Pravo* (1950) no. 12, 5.
- ¹¹³ The Declaration of the World Conference of the Communist Parties, November 1960.
- ¹¹⁴ Grzybowski, *The Socialist Commonwealth of Nations* (1964) 255 Pravde, June 17, 1962.
- ¹¹⁵ Kozhevnikov, *Sovetskoe gosudarstvo i mezhdunarodnoe pravo, 1917-1947, opyt istoriko-pravovogo issledovania* (1948).
- ¹¹⁶ Tunkin, note 51, 88-89.
- ¹¹⁷ Shurshalov, note 56; cf. Usenko, "Osnovnye mezhdunarodnye printsipy sotrudnichestva sotsialisticheskikh gosudarstv," *SGP* (1961), no. 3, 23.
- ¹¹⁸ Shurshalov, note 56, 103.

- ¹¹⁹ *Ibid.* 104-05, cf. Grzybowski, note 114.
- ¹²⁰ Korovin, *Osnovnye problemy sovremennykh mezhdunarodnykh otnoshenii* (1960) 60; cf. also Bobrov's review of Tunkin's: "Voprosy teorii mezhdunarodnogo prava," *SGP* (1963) no. 5, 167-170.
- ¹²¹ Shimunek, "Mezhdunarodnye ekonomicheskie otnoshenia i sorevnovanie dvou system," *Mezhdunarodnaia Zhizn* (1962) no. 12, 23-31.
- ¹²² *Ibid.*
- ¹²³ Levin-Kaluzhnaia, note 64, 295.
- ¹²⁴ *Ibid.*, 21-22.
- ¹²⁵ Ushakov, Meleshko, review *SGP* (1964) no. 10, 154.
- ^{125a} Kovalev, "Suverenitet i internatsionalnye obiazannosti sotsialisticheskikh stran," *Pravda*, September 26, 1968.
- ¹²⁶ Lisovskii, *Mezhdunarodnoe Pravo* (1955) 42.
- ¹²⁷ *International Law*, note 69, 247.
- ¹²⁸ *Ibid.*, 248.
- ¹²⁹ Shurshalov, note 56, 99; see also Talalaev, Boiarshinov, "Neravnopravnye dogovory kak forma uderzhanii kolonialnoi zavisimosti novykh gosudarstv Azii i Afriki," *SEMP* (1961), 170.
- ¹³⁰ Tunkin, Nechaev, "Pravo dogovorov na XVII Sessii komissii mezhdunarodnogo prava OON," *SGP* (1965) no. 3, 71.
- ¹³¹ Lukashuk, "SSSR i mezhdunarodnye dogovory," *SEMP* (1959) 18-19.
- ¹³² Lisovskii, note 126, 252-53.
- ¹³³ Shurshalov, *Osnovaniia deistvitelnosti mezhdunarodnykh dogovorov* (1957) 60-62.
- ¹³⁴ Cf. *infra* p.
- ¹³⁵ Rabl, *Das Selbstbestimmungsrecht der Völker* (1963) 95 ff.
- ¹³⁶ Korovin, note 4, 34.
- ¹³⁷ Note 82, 95.
- ¹³⁸ See U.N. Resolution no. 15-XV, Dec. 14, 1960 and U.N. Resolution no. 1654-XVI of Nov. 27, 196.
- Cf. Juridicheskii slovar vol. 2, 411; Starushenko, "Protiv izvrashchenia printsipa samoopredelenia narodov v Ustave OON," *Voprosy mezhdunarodnogo prava* (1960); Tunkin, note 78, 39; Durdenevskii, "Kontsessia i konventsia Suezckogo kanala v proshlom i nastoiashchem," *SGP* (1956) no. 10, 28-37; Lunts, "Natsionalizatsia kompanii Suezckogo kanala-suverennoe pravo Egipta," *SGP* (1957) no. 2, 82-87; *Suezckii vopros i imperialisticheskaia aggressia protiv Egipta*, Levin, ed. (1957).
- ^{138a} Kovalev, note 125a.
- ¹³⁹ Lunts, in the discussion regarding the codification of private international law as reported in *SGP* (1955) no. 8, 121-22; and Lisovskii, note 126, 247, note 82, 9.

Chapter II

THE STATE AND THE MODERN COMMUNITY OF NATIONS

I. THE STRUCTURE OF THE INTERNATIONAL COMMUNITY: FROM MYTH TO REALITY

On the eve of the October 1917 Revolution an important controversy took place at the highest levels of the Bolshevik Party. The issue was that of nationalism. Rosa Luxemburg of the Social Democracy of the Kingdom of Poland and Lithuania, was of the opinion that during the period of imperialist wars class conflict, pure and simple, dominated the world arena, leaving no room for the expression of national aspirations. Lenin, with greater realism, could not rule out of the general context of the revolutionary movement, which he saw coming as a result of the world conflict, the possibility that wars of national liberation shall accompany the armed confrontation of the hostile classes.¹ Realities of the October, 1917 Revolution convinced Bolshevik leadership that national aspirations had to be recognized. Indeed, the doctrine of self-determination itself was formulated by the Soviet government as a universal principle of new international law.

The Decree on Peace (October 28, 1917), the first act of the Revolutionary government, called for peace without annexations and contributions.

The decree further stated that a manifestation of the will of a nation to gain independence, expressed either in popular meetings, decisions of political parties or in armed uprisings makes continued occupation illegal. It made imposed occupation an act of annexation, which was alleged to be prohibited by international law.²

The Decree on Peace was followed by the Declaration of the Rights of the Nations of Russia (November 2, 1917). This declaration recognized their full equality and national sovereignty.³ In addition to this general statement, the right of the Poles, Finns, Ukrainians and Armenians to independent status was recognized in special acts.

The principle of separation as a result of self-determination was counter-balanced by the invitation to join the Russian Soviet Federated Socialist Republic.⁴

According to those various acts of the Soviet government, the right of self-determination combined with the right of association applied equally to international relations as well as to conditions within Russia proper. However, it is clear that in the circumstances at that time the future shape of the former Russian empire was foremost in the minds of the Russian leaders.

As expectations of Soviet leaders for a socialist revolution in the leading industrial countries of the West and particularly in Germany failed to materialize, the international community was split into two camps: that of the Soviet Union and that of capitalism. In each the status of its components parts was under different legal rules, although the process of history and its laws, which had produced the revolution and the socialist society in Russia, applied to both camps.⁵

The Soviet Union, a world apart but still a part of the community of nations, lived by two standards. Internally it enacted legislation and established public order designed to give expression to new relations between its national entities *inter se*. Outside the Soviet Union the old international order and law prevailed. New institutions such as the League of Nations did not change the basic structure of the international community. The Constitution of 1924 contrasted the two camps thus:

“There is the camp of capitalism — national hatred and inequality, colonial slavery and chauvinism, national oppression and pogroms, imperialist bestiality and wars.

Here in the camp of socialism — mutual trust and peace, national freedom and equality, peaceful coexistence and cooperation of nations.”

As years went by and World War II came, precipitated by the Soviet-Nazi alliance and ending with the Soviet Union in a “Grand Alliance” with the Western Democracies, new elements determining relations between the two camps made their appearance.

In the first place there was a shared experience of the effective collaboration of great powers, able to enforce a uniform policy. The “Grand Alliance” not only cooperated while the war was in progress; it also produced a plan for the future, and among other things established a new framework for world order, i.e. the United Nations.

Stalin, speaking about the United Nations, of which the Soviet Union was one of the founders, predicated the success of the new international organ as an instrument for the preservation of peace upon the unanimous action of the great powers, who would assure the enforcement of the Charter and its principles: “The activity of this organization shall be effective, if the great powers, which bore the main burden of the war against Hitlerite Germany, will act in the future in the spirit of concert and unanimity. This organization shall not be effective if this basic condition would be unfulfilled.”⁶

In the second place, there was the system of socialist states that had later acquired the name of the Socialist Commonwealth of Nations, and had materially changed the international position of the Soviet Union.

In spite of the new situation of the Soviet Union in the international community, Soviet leadership, while Stalin lived, persisted in seeing the world as materially the same community dominated by the imperialists. It was still the old society in which armed conflict remained the main instrument of social change. Speaking in his electoral district following the end of the war, Stalin explained:

"It would be possible to avoid catastrophic wars, were there in existence a method for a periodic redivision of the supply and sources of raw materials and of the world markets among the various states according to their economic importance—by means of decisions arrived at in peaceful negotiations. But this is impossible under the present system of the capitalist development of the world economy."⁷

Later on, the meeting of the Nine Workers and Communist Parties in Poland in September, 1947 failed to see in the developments of the post-World War II era a change in the world situation.⁸

These attitudes of Stalin and of his lieutenants were a reflection of the basic theories of Lenin as to the various plans for a new world order which would prevent military conflicts in the future. Lenin was convinced that such an order was a practical reality only after the abolition of the capitalist economy on a world-wide scale. He viewed all plans for a supranational government while preserving the capitalist economy as a hoax and an impossibility.⁹

The abolition of armed conflicts, according to Lenin, was to follow the socialist revolution and the universal adoption of communism. Only then would a world organization become possible. Its shape and fundamental principle would differ from everything that human society had experienced before. The final stage of the process of integration of the world economy would produce the disappearance of states and their unions, to be replaced by the cooperation of the socialist peoples organized as a single world economic cooperative managed on the basis of a joint economic plan.¹⁰

The post-World War II situation, however, differed profoundly from that of the interwar period. While it was true that the same systemic arrangement was characteristic of both periods, what came into being following the defeat of Germany in World War II was a qualitative difference in the composition of the socialist camp. The Soviet inability to grasp the sense of change brought about the Hungarian upheaval of 1956 followed by the process of liberalization which it set in motion.

The main difference between the two periods was that during the interwar period the interaction between the systems did not penetrate into the viscera of the socialist system. The internal life of the Soviet Union was insulated from the impact of the general rules of international law and the influence of external formulas of international relations. The Soviet Union became a member of the international society as a unitary state. It acquired international personality, shaped its conduct in international relations, and formed its institutions of international relations according to the international law of the capitalist community of nations. Hence the rejection of the concept of the socialist international law by Vyshinski during the great ideological debate of the thirties,¹¹ as the peoples of the Soviet Union had no standing *vis-a-vis* the external world with their status determined by the institutions of Soviet law and the political realities of Soviet internal life.

The Socialist Commonwealth of Nations came into being in the post-

World War II period and continued to be an integral part of the community of nations at large, even after becoming a Soviet sphere of influence. True, its cultural and economic ties with the Western World were considerably weakened and were replaced by the increased economic and cultural influence of the Soviet Union. Further, the earlier security arrangements of these nations which featured alliances with Western powers were also replaced by Soviet alliances. It must be realized, however, that the integration of the Socialist Commonwealth members into the legal framework of Europe and the Western world in general remained much greater than that experienced by the Soviet Union, particularly as regards their participation in various international organizations, conventions and treaties promoting international legal, economic and cultural cooperation (e.g., copyright and protection of industrial property). In order to meet the needs of the situation it was essential to devise a proper framework for Soviet relations both with the community at large and also with the socialist system of which the Soviet Union was the main pillar.

International law was an adequate framework for relations with the non-socialist world. Within the socialist system, the Soviet Union had to rely on two kinds of rules: first, those which with specific modifications were rules of law governing international relations in general (hence, the concept of the socialist international law); and second, those rules governing relations between the Communist Party of the Soviet Union and other communist parties (hence, the concept of the ruling parties).

This dualism did not become fully apparent while Stalin was at the helm of the Soviet ship of state. Following his death, however, a progressive institutionalization of the two channels of relations between the socialist states revealed fully the communication lines between various decision-making centers within the Socialist Commonwealth of Nations.

As the platforms of cooperation emerged in the post-Stalin era of Commonwealth politics, it became apparent that the tendency was to assimilate the two channels of cooperation and submit them to the same set of rules. It was discovered that both parties and governments dealt with the same matters. The accepted explanation, that relations between the socialist countries were free from conflicts of interest, was found untrue.

As this process took place, it was essential to substitute legal rules for the myth that a lack of conflict was the basis of common action and agreement in terms of the principles of Marxist doctrine. The declaration of the Soviet government issued on October 30, 1956, in the face of the upheaval in Hungary and Poland, stated:

“As recent events have shown, the need has arisen for an appropriate declaration concerning the position of the Soviet Union in the mutual relations between the USSR and the other socialist countries, primarily in economic and military spheres. The Soviet government is ready to discuss with the governments of other socialist countries measures for the development and strengthening of the economic ties between socialist countries, in

order to remove any possibilities of violating the principles of national sovereignty, national advantage and equality in economic relations.”¹²

II. THE FUNCTION OF LAW IN INTERNATIONAL COMMUNITY

The trend towards legalistic forms in the cooperation of the socialist states was to parallel the developments which emphasized greater reliance of the Soviet Union on international law in the international community at large. In the first place the development of nuclear weapons produced a situation in which occurrence of an armed conflict on a world war scale had to be ruled out. Nikita Khrushchev's speech at the United Nations General Assembly on September 18, 1959 indicated that the state of nuclear armaments of the leading powers had ruled out the use of such weapons thereby excluding the possibility of a military conflict for the future.

“It is difficult to imagine the consequences for mankind of a war in which these monstrous means of destruction and annihilation were used. If such a war were allowed to break out, the number of victims would be counted not in millions, but in many tens and even hundreds of millions of human lives. It would be a war in which there was no difference between the front and the rear, between soldiers and children. It would result in laying in ruin many large cities and centers of industry, and in the irrevocable loss of greatest cultural monuments . . . Nor would such a war spare future generations. Its poisonous trail in the form of radioactive contamination would long continue to maim people and claim many lives.”¹³

The other development which affected the shape of the community of nations and also the Soviet understanding of the forces of history that eventually would produce a Communist world order, was the emancipation of the colonial peoples and the acceleration of the disintegration of the colonial empires.

Not only had great wars become a mortal danger to the human civilization, but in Marxist-Leninist terms, they were no longer needed as an historical trigger for international crises initiating movements towards national liberation and liquidation of colonial empires. In this process of emancipation the expanding membership of the United Nations Organization and the growing influence of the Socialist Commonwealth of Nations offered a new platform for political actions forcing a reappraisal of the roles of the United Nations and of the Socialist Commonwealth within the international community.

A Soviet member of the International Law Commission speaking at its session in the Spring of 1962 declared:

“One of the features of the age in which they were living had been the emergence and consolidation of the new socialist system which was playing a decisive role in international affairs; another was the dissolution of the colonial system from whose ruins new states were arising. As a result of those

changes, international law was undergoing a radical transformation. Previously nations under a colonial regime and others nominally independent had been debarred from taking part in the formulation of its principles and rules, and had been subject to an international law which stronger powers had used to impose their will on the weaker. That was no longer true; international law was now becoming more nearly universal, a process that would continue as the last vestiges of colonialism disappeared in the not too distant future."

"The nature of international law was also changing. It had become a weapon in the struggle for peace and furnished the fundamental legal concepts on which the principles of peaceful coexistence was based and which must be upheld if mankind was not to be plunged into catastrophe . . . The progressive codification of international law and the observance of its rules were indispensable for the preservation of peace, the most burning issue facing the international community."¹⁴

One of the most important sources of information of the impact of these events on the views of Soviet government, as regards the content and function of the rules of international law, has been the opinions of Soviet members of the International Law Commission. Although chosen and given a mandate to participate in the work of the International Law Commission by the United Nations Organization, Soviet scholars invariably felt and acted as representatives of the interests of the Soviet government. They regarded themselves as negotiators of international treaties and conventions to be signed by the government of the Soviet Union. They sought no opportunity to manifest their personal views as regards points of legal theory that might differ from views of the Soviet leadership. Depending upon the period of their participation in the debates of the ILC, their supreme authority consisted of references to the views of Marx, Lenin, Stalin, and Krushchev. In the early period of the participation of Soviet scholars in its work Mr. Korytsky pointed out:

"... Two trends had appeared in the Committee . . . ; the first trend had been to set up a commission of experts whose activities would not take external conditions, the position of various governments, nor the political responsibilities of the General Assembly into account. The trend had prevailed in the sense that the Commission members had been appointed for their personal competence and not as representatives of their governments. The principles of the other trend had been borne by the fact that the Commission was actually only a subsidiary organ of the General Assembly whose activities must be in conformity with the wishes of the latter and United Nations principles.

"The International Law Commission was not the government of philosophers advocated by Plato; it was composed of citizens of various countries whose mission was to promote the progressive development of international law and its codification in accordance with the directives of the General Assembly and the wishes of their governments."¹⁵

Hence, and with some impatience, Soviet members participated in discussions dealing with the basic issues of international law—concerning the nature of the rules of international law and the doctrines of legal institutions. They were always prone to direct attention to the political consequences of various legislative solutions which made the formulation of a legal rule or principle acceptable to the Soviet government.

Following the death of Stalin a visible change took place in the opinions of Soviet members in the International Law Commission, both as to the structure of the international community and the role of international law in that community. To emphasize the change, it is useful to compare the evolution of the opinions of the Soviet members in the ILC with those of Soviet scholars at the end of Stalin's regime.

Professor Koretsky, speaking in 1949, found the system of international law "... tinged with the Europeanism of the nineteenth century, a period when French capital had supported Tsarism, when French had been the diplomatic language *par excellence*, and when French doctrines had predominated. The United Kingdom had also played an equally dominant role at that time, particularly in matters of maritime law. With the twentieth century, what may be called Americanism had made its appearance in international law; this was an obvious fact that could not be left out of account. Thus international law had hitherto been dominated by two tendencies . . . which ignored any conceptions that had arisen in other parts of the world. Apparently, therefore, America and Europe wished to retain a monopoly of civilization . . ."¹⁶

On another occasion Professor Koretsky stated: "From the historical point of view it would not be denied that the recognized law of nations had been drawn during the era of liberal capitalism, on the basis of contemporary Roman law and by the transpositions of the principle of civil rights in the international field. The twentieth century had, however, seen the establishment of new legal systems both at the national and the international level. Cooperation between states which were at different stages of historical evolution required a re-classification of matters of international law which took into accounts those modern concepts . . ."¹⁷

It is quite natural that in those circumstances one of the preconditions for working out the new system of law governing relations between the states was the presumption against the validity of the entire body of law established by the old international practice. Professor Koretsky, speaking for the position of Soviet science of international law, was convinced that

"... customary international law was too vague to be important and might moreover be fashioned into a tool to serve certain deplorable tendencies. Custom existed because states were unequal and slavery still prevailed. He quoted the example of mixed courts which had been used to promote colonial infiltration in dependent territories; customary law had also been used by the counter-revolutionaries to impose a foreign yoke on certain countries . . . The world was now entering a new phase. The Commission

should rather study the new documents and treaties which were being drawn up throughout the world; any other procedure would mark a retrogression to the black past.”¹⁸

Moreover developing the report further Professor Koretsky added:

“Regarding the question of principle raised by Mr. Scelle, Mr. Koretsky noted that a number of members seemed to feel that customary law was the basic source of international law. That view was wrong. A correct study of the evolution of international law would show that customary law was bound by tradition, backward and always lagged behind social development. Conventional law, on the other hand, was progressive; in it were crystallized the new principles of law, and thus it served to strengthen the development of international law. There were many new sources of conventional law; the Charter of the United Nations, for instance, which laid down many new principles of international law, was essentially a treaty which had been signed by all peaceloving nations in San Francisco. Consequently treaties, which were the expression of the sovereign will of sovereign States acting jointly, should be considered the principal sources of international law and should be studied with a view of extracting the main principles which they embodied . . .”¹⁹

In time, however, a new attitude regarding the scope and the function of international law replaced the earlier and rather restrictive viewpoint. Mr. Tunkin, the Soviet member of the International Law Commission, formulated the changing structure of the international community that warranted a new approach to the function of international law. Speaking on May 9, 1962, he asserted:

“The rules of traditional international law on the subject of international capacity reflected a structure of international society in which such entities as colonies and protectorates had the status of dependent territories. By contrast one of the leading principles of modern international law was that of self-determination of peoples, which had been embodied and elaborated in the ‘formal’ Declaration on the granting of independence to colonial countries and peoples adopted by the General Assembly of the United Nations on December 14, 1960 as its Resolution 1514 (XV). The consequence of the recognition of the principle of self-determination was that every nation had the right to determine its own legal status; if it chose to become part of a unitary state, it would not be a subject of international law. If it decided to become an independent state, it had the international capacity to act.”²⁰

In order to arrive at an adequate system of international law new rules and principles had to be brought in. The selection of these principles would be indicated by higher considerations. In the words of a Soviet member of the International Law Commission: “The concept of international public order was understood differently by different writers. Some held that it was imposed as a consequence of natural law having its source in human nature or emanating from a divine source and independent of the will of State. History

showed, however, that in the long run the laws governing the development of human society were decisive, and that once rules of international law ceased to correspond to those laws and thus to meet the demands of life, they sooner or later became a dead letter and disappeared. But laws of development were certainly not legal in character, though they did ultimately condition the creation of rules of law by states through agreement, which he held to include not only treaties, but also custom."²¹ On another occasion the same jurist explained that relations between states as well as between individuals were not based upon a system of mutual rights and obligations. This was not the purpose of law, for as Marx had demonstrated, society was not based upon law. If the social relations changed, the content of the legal rule would also change.²²

International law, as it appears from the enunciations of Soviet members of the International Law Commission, consists of rules dating from various periods. General laws of history set trends for the development of international law. Within the system of international law one may distinguish obsolete rules that should be abrogated. Moreover, there are certain rules which reflect properly the current situation of the international community. Some of these rules, are fundamental to the present international system and limit the freedom of the states in determining their mutual rights and obligations. These rules have the force of *ius cogens*.

The main trend in the development of the international community in the opinion of the Soviet members of the ILC is the emancipation of subject nations; these nations must be given full opportunity to assert their rights in terms of international law. This may frequently conflict with the existing rights and obligations under a treaty law in force, but in such a case treaties must give way to realities. As Mr. Tunkin has asserted:

"Among many treaties in existence, there were a number which were a heritage of the colonial system or had recently been imposed by the colonial powers on new states. As the new states matured and as formal independence was transformed into real independence, the social forces working for peace were bound to rebel against certain treaties concluded earlier."²²

The central principle of the current system of international law is the preservation of that complex of rights which are associated with the state sovereignty. Professor Kozhevnikov, a Soviet member of the International Law Commission, expressed this idea as follows: "The idea that international law should have priority over the sovereign rights of states was quite unacceptable. It sought to make of international law something standing above states, whereas, as he had already pointed out, the whole purpose of that law was to govern relations between them."²³ Furthermore, "... it was quite incorrect to seek to apply the principles of municipal law in the field of international law or to try to bring the latter into line with the former; international law was a form of law *sui generis*, regulating relations between sovereign states." Developing his ideas further Mr. Koretsky said: "According to one interpretation, every state derived its rights from international

law. He did not feel, however, that that approach was in accordance with the facts. The supremacy of international law was a concept invented in an attempt to set up a supreme authority and as such to be rejected.”²⁴ Mr. Kozhevnikov has formulated the same point as follows: “Mr. Scelle’s text went a very long way and would result in the creation of a supranational organ which might threaten the interests of states. That would be entirely contrary to international law, the purpose of which was to reconcile the interests of sovereign states.”²⁵

Principles of *ius cogens* are therefore state-centered. Their purpose is to create ideal conditions for the realization of national statehood by each ethnic group aspiring to it and a proper reconstruction of the international treaty and customary laws not to obstruct this trend in the development of the new international community. One of the conditions for the realization of the process is maintenance of peace and prohibition of the use of force for obstructing the process of disintegration.

The definition of *ius cogens* was given by Mr. Tunkin as follows: “*Ius cogens* were . . . fundamental rules of contemporary international law from which states could not derogate by agreement. For example, the rules bearing directly on the maintenance of international peace constituted rules of *ius cogens*, since they had been established in the interests of the international community as a whole.”²⁶

Most of the rules of *ius cogens* have originated in customary international law. A typical example of such rules is the rule *pacta sunt servanda* which applied not only to treaties but also to all rules of international law, as all of those rules were based upon agreement between states.²⁷ This does not mean, however, that *ius cogens* may be found only in customary law. As Mr. Tunkin explained during the 1963 ILC session:

“Some of the rules created by agreement between states in that broad sense were recognized by them as possessing the character of *ius cogens*. In other words, they were not rules imposed from above by the operation of some natural law. That being so, . . . a general multilateral treaty to which all or nearly all states of the international community were parties could abrogate or modify a rule of *ius cogens*.”²⁸

The meaning of *ius cogens* is the degree of recognition of a rule of law, either established by custom or in a multilateral treaty, which makes it a cornerstone of public order in the international community. A typical example in this respect, according to Mr. Tunkin, was the Treaty of Paris, the Kellogg-Briand Pact of 1928 on the Renunciation of War. “Many examples could be given,” stated Mr. Tunkin, “of a treaty rule gradually extending its sphere of application by custom and becoming accepted as a customary rule by states not parties to the treaty. There was, of course, no suggestion that a rule embodied in a treaty adopted, say, by one half of the states forming the international community, could automatically become a rule of customary international law. The intention was to refer to such rules as that which had outlawed aggressive wars; that rule had been laid down

in the Pact of Paris of 1928, the Kellogg-Briand Pact, but had gradually become a customary rule of international law for states not parties to that treaty and had been recognized as such by the Nuremberg Tribunal.”²⁹

III. PERSONALITY IN INTERNATIONAL LAW

A. *States*

The central place in the structure of the international community belongs to the states. At the present time international society is undergoing a process of numerical expansion, a process which is affecting its laws and institutions. These laws and institutions still are for the most part, vestiges of the earlier period when these new nations were dominated by the Western world. Institutions born in the earlier period are no longer generally accepted.

The gauge to measure the extent of change in international law of the modern time is to be found in the legal institutions of municipal law. Among such institutions Soviet members of the International Law Commission listed the system of property relations based on individual property rights. This system is no longer dominant in the world and has been replaced by two systems featuring private property rights and the socialist system of property.

This change in property relations, Soviet scholars and diplomats assert, affected profoundly a number of international law areas, affecting the status of states. In the first place the rights of aliens must be redefined. In this connection the problem of the responsibility of states for the violation of the rights of aliens must be reexamined. Furthermore, as the change in the system of property relations affects the position of the individual *vis-a-vis* the state, the tendency towards creation of a supranational authority is no longer justified in the international community at large. Moreover, the tendency to accord the individual a separate place in international law has no place in the modern international community.

The structure of the present day international community and the function of international law in this context was discussed extensively by Judge Winiarski (from Poland) in the ICJ case regarding Certain Expenses of the United Nations.³⁰

Judge Winiarski distinguished between a formal and a substantive validity of the decisions of the United Nations' organs, a distinction which he considered particularly applicable to the decisions of the General Assembly: “[T]he Assembly . . . interprets the Charter by applying it and its interpretation is final. This is true to a certain extent and particularly where its interpretation has been generally accepted by member states.”³¹ Judge Winiarski indicated, furthermore, that the collective aspect of the participation of individual nations in the United Nations is resolved into a number

of separate relationships which depend upon each member's acceptance of the collective decision of the United Nations' bodies. Membership in the United Nations, therefore, does not involve a duty to support its policy. To gain this support, the United Nations policy must become the national policy of each state. Sometimes it may become necessary to make a choice between upholding the aims of the United Nations and the principle of national sovereignty of member states. It seems to be Judge Winiarski's view that, in both legal and political terms, in the case of such a conflict, national sovereignty is a more important feature of the present international system than the aims of the United Nations. He argues that each member state has a right to reject the decision of the United Nations' organs, even when that decision was adopted by a proper majority and was authorized by the Charter:

"It is sometimes difficult to attribute any precise legal significance to the conduct of the contracting parties, because it is not always possible to know with certainty whether they have acted in a certain manner because they consider that the law so requires or allows, or for reasons of expediency. However, in the case referred to the Court, it is established that some at least of the member states refuse to comply with the decisions of the General Assembly because they dispute the conformity of those decisions with the Charter. Apparently, they are of the opinion that the resolutions cannot be relied upon as against them although they may be valid and binding in respect of other states. What is therefore involved is the validity of the Assembly's resolutions in respect of those states, or the right to rely upon them as against those states.

It has been said that the nullity of a legal instrument can be relied upon only when there has been a finding of nullity by a competent tribunal . . . In the international legal system, however, there is, in the absence of agreement to the contrary, no tribunal competent to make a finding of nullity. It is the state which regards itself as the injured party which itself rejects a legal instrument vitiated, in its opinion, by such defects as to render it a nullity. Such a decision is obviously a grave one and one to which resort can be had only in exceptional cases, but one which is nevertheless sometimes inevitable and which is recognized as such by general international law."³²

The new states needed firmer guarantees of their independence and sovereignty, and the principle of non-intervention in the internal affairs of states had to be strengthened. In connection with the discussion in the International Law Commission of the draft of the Treaty on the Responsibility of States, the Soviet member of the Commission explained:

"... the provisions of the Draft relating to property were formulated in disregard of the fact that two fundamentally different economic systems now existed in the world and also in disregard of the disintegration of the colonial system. For example, paragraph 3, article 10 (. . .) which laid down certain standards for compensation, in effect reproduced the corresponding provisions of the Code Napoleon of 1804 in its concern for the sanctity of private

property. While such provisions might still exist in the municipal law of some countries, it was absolutely inadmissible, in view of the coexistence of two economic systems, to postulate the principle as a rule of international law."³³

The same also applies to ideas to establish a supranational organization which would take over, in the interest of the community of nations, governmental functions which traditionally belonged to the exclusive jurisdiction of states.

One of the essential problems was the right of a social group to form a state and acquire a personality under international law. This capacity belonged exclusively to the community itself. Mr. Koretsky, opposing in the discussion on the Draft Declaration of Rights and Duties of States, any effort to define a state, explained:

"Obviously there were many approaches to such a definition and he did not feel that the Commission should attempt at that stage of its work to define such a controversial term. In certain circumstances a definition might be devised which could be interpreted to mean that an international authority would be given the right to decide whether any community was a state or not. However, that right belonged to the community itself."³⁴

In this connection Soviet jurists in the International Law Commission were prepared to rely on the practice demonstrated by declarations such as the American Declaration of Independence, the French Declaration of the Rights of Nations, and in the present period, upon two modern declarations of the rights of nations: the Declaration of the Rights of the Peoples of Russia of November 51, 1917, and the 1960 Resolution of the General Assembly on the granting of independence to colonial countries and peoples.³⁵

During the initial years of the Soviet state, some of the Marxists scholars in Russia sought to substitute the ethnic group for the state, or at least to accord to the people the role of holder of the right to form a state. Vestiges of this attitude have survived to the present time, as reflected in the basic support of the Soviet Union for wars of national liberation, although there may be a question as to whether an ethnic group, engaged in a legitimate struggle for its independence, is a state under international law. As Mr. Koretsky stated: "Only the sovereign people created the State . . ."³⁶

The attribute of sovereignty appears to reside in the people, and is manifested in some manner, indicating that such people are taking steps to give a formal expression of their sovereign right to have a state.

In the early days of the Soviet regime the Soviet government included in the system of subjects of international law, international organizations of the proletarian classes.³⁷ This did not last long because the Soviet government found it inconvenient to insist upon the international personality of the workers or communist party organizations.

B. *The Holy See*

As a state which purports to establish a social order that will exclude, as a matter of national policy, any place for churches and religion as such, the Soviet Union does not maintain diplomatic relations with the Holy See. Nevertheless, the Soviet government has entered into agreements with the Holy See in order to regulate matters of common interest. In 1920-21, for example, the Soviet Union accepted its offer to assist the Russian population afflicted by a famine and the resulting epidemics. It therefore made an agreement with the Vatican regarding the assistance to be given through the Catholic missions in Russia. Gromyko, the Soviet delegate to the United Nations, met with the Pope during his visit to the United Nations in 1965. Later during his visit to Italy in 1967, Gromyko, together with the Soviet ambassador accredited in Italy, was received in an official audience by the Pope.

In 1967 Podgorny, the Chairman of the Supreme Soviet of the Soviet Union, a position corresponding to that of a ceremonial head of state, visited Pope Paul VI and was received by him in the presence of the Soviet ambassador to Italy in an official audience.

It is a matter of conjecture as to what legal meaning can be attributed to these events. It may, be pointed out that during the early days of the revolutionary regime in Russia the Soviet government concluded similar agreements with other charitable organizations, and these were given special status and privileges as they were not endowed with an international personality and did not aspire to such a status. It is possible to interpret the agreement with the Holy See concerning the assistance to the famine-stricken population of Russia as a contract with a non-governmental organization, thus placing the contract legally in the same category as other contracts concluded with charitable organizations such as the American Relief and thereby dismissing the issue of the international law personality of the Holy See in Soviet diplomatic practice. The difficulty lies in the fact that the Holy See had a traditionally recognized status under international law. Soviet scholars do not question the international status of the Holy See.

C. *Individual in International Law*

The practice of treaties for the protection of minorities, the regime established in Upper Silesia and the earlier practice of the American claims commission have raised the issue of the status of the individual in international law. Modernistic tendencies both in theory and practice have sought to assure the protection of human rights by means of the independent status of the individual, permitting the individual to seek enforcement of his rights in international bodies.³⁸

The position of the Soviet government shows that "the purpose of inter-

national law was to regulate relations between states which were independent and sovereign entities. The rights of the individual lay outside the direct scope of international law, and it was only by virtue of the legal bond which existed between the individual and the State that his rights could be protected.”³⁹

There is little support for the independent status of the individual under the customary international law, although some argument may be made from the fact that individuals were found guilty of the violations of international law at the Nuremberg trial.⁴⁰ During the post-World War II era, the idea of the independent status of the individual made an important advance through the European Convention on Human Rights and Freedoms of November 4, 1950, which had provided for the European Commission on Human Rights and a European Court on Human Rights. This, however, has been outside the Soviet sphere of influence.

The movement for the emancipation of the individual in the field of international relations was clearly a result of adherence to the individualistic tradition. As such, it was unacceptable to collectivist concepts of individual state relations, because it ran counter to the principle of exclusive jurisdiction in internal affairs.

Mr. Koretsky, in his criticism of the Draft Declaration on the Rights and Duties of States, stated that the Declaration should have mentioned the “obligation of all states to see that the rights and privileges of citizenship were granted to all without distinction as to race, sex, language or religion. However, this provision would constitute only an obligation for the state, but not a right of the individual as he did not believe that man was a subject of international law.”⁴¹

Moreover, citizenship and nationality were the formulation of the bond defining the individual's relations with the state. These relations remained within exclusive domestic jurisdiction.⁴²

In the final analysis the individual could not obtain a standing in international law because of the changes in the structure of international community. Mr. Tunkin asserted:

“The problem of state responsibility reached down to the very foundations of contemporary international law. It was therefore essential to bear in mind the recent developments in international relations and international law, which were due to the progress of human society. Two events were of particular importance in that connection: first the emergence and growth of a new socialist economic system with the result that the coexistence of two different economic systems, both on a world-wide scale, had now to be reckoned with; and second, the attainment of independence by a great many former colonial and dependent territories, a process which was still continuing . . . Present-day international law could not be a system of legal rules imposed by the states belonging to one another; worldwide international law could not contain rules which were incompatible with the principles of one of the two main economic systems . . . Aliens must not be regarded as a

privileged group enjoying special privileges. The fundamental principle was that they must be subject to the law of the country of their residence. Individuals, whether nationals or aliens were not, in fact, subjects of international law at all . . . ”⁴³

In another area, the proposal that individuals be given the right to appear in international tribunals, was opposed by Mr. Kozhevnikov:

“As recognized by jurists, and as could be seen from history, international law regulated the relations between States. Under the joint proposal, however, individuals would no longer necessarily be represented by a State; they would themselves be able to bring cases before an international tribunal, without the intermediary of any State.”⁴⁴

Admission of the individual to processes of international law, as Mr. Kozhevnikov termed it, would offer additional opportunities for interfering with internal affairs of states. If this happened “international law would be directed not towards democracy, peace and progress, but towards other reprehensible ends.”⁴⁵

He warned:

“Certainly there was a tendency to forsake such long established principles of international law as that the sole subjects of international law were states; there was also a tendency to substitute for the sovereignty of states some kind of world government; but that tendency could only lead to the complete stultification of international law. It was not the Commission’s task to create an entirely new system of international law but to codify and develop present law within its existing framework . . . It was not true to argue, for example, that the Judgment of the Nuremberg Tribunal made the individual a subject of international law; international law forbade not only aggression itself, but also propaganda for and the preparation of aggression, as well as war crimes against humanity, and it was clear that any individuals guilty of those crimes should be punished. That, however, in no way meant that the individual thereby became a subject of international law . . . ”⁴⁶

Another concept that Soviet members of the commission dealt with in this regard was the substitution, for the citizenship of a particular state, of a world citizenship as advocated by Mr. Scelle. Here Mr. Kozhevnikov’s stance was that “the concept of nationality was indissolubly linked with the concept of the State as a subject on international law. In other words, nationality could be defined as a specific legal relationship between the individual and the State. From that link derived the dialectic relationship between the individual and the State in respect of mutual rights and duties . . . ”⁴⁷

IV. RECOGNITION

A. *Theory of Recognition*

Expansion of the international community is a constant process which is centered on the system that originated in Western Europe, spread to the other continents and finally provided a framework for the institutions and organizations which channel all aspects of human activity in international relations. At various periods in history, the European-centered international system competed with state and international community building in other parts of the world. Owing to the technological advancement—particularly in the methods of war making, industry, commerce, transportation, and communications—the European system outdistanced all other systems, and thus the international community of the present day is essentially the product of Europe and European developed international law.

Recognition is an institution providing for the constant expansion of the international community, determining moreover both the conditions for admission of a state to the international community and the technique of such admission. It reflects a quality—typical of European system building and easily termed as club mentality—that is present in all stages of international community building: the Roman Empire with its system of allies, medieval *Communitas Christiana*, the concert of Europe, etc.

As in many other areas of international law, the rules of admission to the international community may be questioned or even challenged, and it is easy to see that to a large extent such a challenge inheres in the policies of the Soviet Union.

Historically speaking it is not the first time that the situation of this type has arisen. Recalling the best known instances of similar situations in the past, there was the period of the Council of Constance (1417-23) where the status of infidel states and their relationship in the *Communitas Christiana* was debated. Another historical parallel concerned the era that ended with the peace Treaty of Westfalia in 1648, which produced the modern community of nations. In each case, new rules of admission changed the character of the international community and in a sense issued forth a new era.

The complex of legal issues connected with the process of admission to the international community was seen in two dimensions. The constitutive school saw in the process of recognition, which in most modern times was expanded to the admission to the great international organizations (the League of Nations and the United Nations Organization) a legal act which created a personality in international law and which introduced into relations between a recognized and recognizing state (or states) the element of rights and obligations. The declaratory school, on the other hand, limited the effect of recognition to establishing legal relations between the two parties engaged in the process of recognition; because a new state, as shown by the

fact that it already exists and exercises power over a territory, is already a member of the community of nations and under the protection of international law.⁴⁸

The Soviet theory and practice of recognition tends towards the declaratory school. It started from the premise that the creation of the state is the function of internal law rather than international law. Indeed, Mr. Koretsky "doubted the necessity of setting down requirements for statehood. In practice until now, recognition was a matter of diplomatic acts and for the purpose of diplomatic relations. He opposed any proposals which would represent a check upon the legitimacy of the birth of the new states, linking recognition with authorization for existence . . ."⁴⁹

Mr. Koretsky emphasized that the establishment of a state was a matter of municipal law and that the theory of the supremacy of the international over municipal law was an erroneous one.⁵⁰ Soviet members of the International Law Commission were also opposed to concepts, provisions and definitions which could suggest that the legal personality of a state in international law was definable under international law. Mr. Tunkin was convinced that: "All states are equal, and modern international law is opposed to legal formulations suggesting limitations of sovereignty, capacity or semi-dependent status, indicating limitation of sovereignty. Restrictions of states to engage in the conduct of their international relations may result exclusively from the provisions of their municipal law, and the only concrete example of such legally permissible limitation is the status of a member of a federal state, when the federal government has the exclusive right to represent the federation or union in international affairs. Even then, however, if the constitution is silent, the member states of a federal state may have international capacity, and, for instance, conclude treaties."⁵¹ Moreover, he wished to add that "such a statement (concerning the limitation of state's capacity to make treaties) would reflect one of the aspects of the new international law, in contradistinction to the old international law, which had recognized the existence of States that were not fully independent; that situation had been the expression of colonial dependence. Contemporary international law condemned and prohibited any form of subjugation of one State by another. That prohibition followed from the United Nations Charter, as developed in 1960 by General Assembly Resolution 1514 (XV) embodying the 'Declaration on the granting of independence to colonial countries and peoples.' "⁵²

The Soviet position was that recognition by individual states could not interfere with the right of a state either to be a party to a multilateral treaty, or the right of the legation. As Mr. Tunkin put it:

"Even in the case of admission of new members to the United Nations, it had frequently happened that States had voted for the admission of new states although they had not yet recognized those new States at the time of the vote. There could be no doubt that States were subjects of international law, regardless of their recognition, and were equal under that law. How,

therefore, could any State be precluded from participating in a multilateral treaty of a universal character,"⁵³ Furthermore, "He did not think that the analogy between the right to participate in a treaty and the right to establish diplomatic relations was sound. For example, if a group of States called a conference to draft a treaty concerning the regime of the high seas, other States could hardly be debarred from participating, for the high seas were *res communis omnium*. By contrast, the establishment of diplomatic relations was a matter between two States."⁵⁴ "In modern times, international personality did not depend upon recognition."⁵⁵

Thus, recognition is only a process of acknowledgement of a social and political fact. During the discussion of the Rights and Duties of States, Mr. Koretsky "thought that in those proposals there was certain danger of returning to the doctrine of legitimism or the policy of non-recognition by which one group of States could virtually control the existence of another. That would be a step backward. "Illegitimate states," in Mr. Koretsky's opinion, "had the right to exist as well as so-called legitimate States. Any attempt to legitimize such entities would be tantamount to establishing control over their formation, contrary to the principles of self-determination."⁵⁶

The Soviet position as to the function and role of recognition was the result of Soviet experience since the transformation of the Russian empire into a revolutionary state. Leading powers denied recognition to the new Russia for a considerable period of time, creating great difficulties for her diplomatic and political activities and hampering the development of foreign trade by the Soviet state. Such obstacles in the way of the expansion of economic cooperation, a result of the absence of official relations between the Soviet government and the highly industrialized West, were mainly because of the Soviet monopoly over its foreign trade which called for the presence of Soviet trade missions abroad and for confidence in the Soviet state as a trade partner. Although by 1933 the Soviet Union had established relations with the great powers, there was still a considerable number of states that refused to exchange diplomatic missions with the Soviet government. The final breakthrough came after World War II, when the victory of the Allies in the war against the Axis powers turned the Soviet government into one of the architects of the United Nations Organizations and made the Soviet Union a pillar of the new world order. In the first year of the post-World War II period, the Soviet Union had established relations with the vast majority of member states of the international community.

In the ensuing period the Soviet Union continued to extend its recognition to every new nation that gained sovereign status as a result of the disintegration of the colonial empires, with the result that at the present time over ninety countries have their embassies or legations in Moscow.

The Soviet government makes no difference in practice between a recognition *de facto* and recognition *de iure*, as it adopts the position that each national group has the right to statehood and free choice of its form of

government, although the right of choice of government or the status within the community of free nations, may be subject to modifications. Certainly, ethnic groups which are geographically located so that it is impossible for them to be members of the Soviet Union have full freedom in these two areas of political decision. Soviet practice demonstrates, however, that the Soviet government does make a distinction between the recognition of a state and that of the regime.

B. Recognition of New States

The fall of the imperial Russian regime strengthened and revived the drive towards the independence of various nations and ethnic groups which had been conquered by the Russian Tsars and who sought now to establish their national states and their liberation from Russian rule. One of the first steps of the Provisional Government was the enactment of the Decree of March 20, 1917, which abolished religious and national discrimination in Russia and declared the right of self-determination for all its nations. At the same time plans were made to guarantee a separate and autonomous status for those ethnic groups which, owing to special historical ties, were to remain within the framework of the new Russian republic.

The future of the Grand Duchy of Finland was the object of special attention. A Declaration of the Provisional Government, March 7, 1917, confirmed the original rights of Finns to self-government, while a law of July 5, 1917, guaranteed to the Finnish Diet sovereign powers over Finnish affairs, reserving only foreign affairs and military matters to the legislation of the Central Government of Russia.

The principle of self-determination was restated by the Bolshevik regime following the Revolution of October, 1917. The Decree Concerning the Rights of the Peoples of Russia (December 2, 1917), recognized the right of each ethnic group to establish its own political organization, including the right to create its own separate, independent republics.

The promises of the self-determination decree were not wholly honored. Following an almost total administrative disorganization in Russia, various territorial units, sometimes inhabited by the Russian population but mainly settled by the separate ethnic groups, claimed independence under various names indicating their independent national status. Most of these republics, free states with various qualifying names, indicated their connection with an ethnic majority, a religion, or a type of government (democratic) etc., but did not gain formal recognition from the Bolshevik regime, which suppressed them by force.

Formal recognition of independence was granted by the Bolshevik regime to the following nations:

1. The right of the Ukraine to national independence was recognized on December 1, 1917.

2. The independence of Finland was recognized on December 18, 1917.
3. A declaration, recognizing the right of Armenia to self-determination and establishment of her own state was issued on December 31, 1917.

These declarations were followed by the recognition of the Estonian Soviet Republic on December 8, 1918; Latvian Soviet Republic on December 22, 1918; and Soviet Lithuania on December 22, 1918. The independence of Poland was recognized by the Petrograd Soviet still under the regime of the Provisional Government on March 14, 1917.

It is interesting to note, that at the time these declarations and recognitions were made, the territories of Finland, Poland, Armenia, and the three Baltic republics were under German, Austrian or Turkish occupation; and neither the Soviet government nor the communist parties of these countries were able to influence the development of these territories towards their ultimate independent status. Following the withdrawal of the German military forces from the Ukraine, the Government of the RSFSR declared that as from that date (December 24, 1918), it was no longer prepared to continue recognition of the Ukraine as an independent state. This declaration followed the creation on November 20, 1918, of a Worker-Peasant Government of the Ukraine, under the chairmanship of Stalin with Voroshilov as one of the people's commissars.

The Soviet Union also refused to recognize the delegation of the Regency Council of Poland with Alexander Lednicki at its head as representing the government of Poland for the affairs of Polish deportees in Russia. When German resistance in the West collapsed, however, and a Polish government representing all three parts of Poland (Austrian, Russian, and Prussian) was established, the government of the RSFSR received Alexander Wieckowski, who had been sent from Warsaw to deal with refugees and deportees, as a representative of Poland and it also sought to establish diplomatic relations with the Polish government.

The Ukrainian solution was also successfully used in respect of Georgia. Following the October Revolution and the outbreak of the Civil War, the South of Russia was the theater of operations dominated by the counter-revolutionary armies which prevented Bolshevik penetration directed from the center. The Mensheviks, who dominated the local scene, set up on May 26, 1918, the Georgian Republic. The independence of Georgia was recognized by the Government of the RSFSR in the Treaty of May 7, 1920, and delegations between the two governments were exchanged. In the Spring of 1921 the Red Army invaded Georgia, a Soviet regime was set up, and on May 21, 1921, the Soviet government concluded a treaty of alliance with Soviet Georgia.

Conversion of Georgia into a Soviet Republic was preceded by the attempt to set up a Soviet republic in Poland. Stalin (*Marksizm i Natsionalnyi Vopros*) thus qualified the meaning of the recognition policy:

"... the right of self-determination cannot and should not hinder the realization of the right of the working class to its own dictatorship. The

former must make room for the latter. Such was, for instance, the situation in 1920 when we were compelled to march on Warsaw in the interest of the power of the working class."

However, plans for the establishment of Soviet Poland, Estonia, Latvia and Lithuania failed to materialize; as these four countries were able to resist the Soviet armies. Peace treaties between the three latter republics and the Soviet Union provided for mutual recognition and an establishment of diplomatic relations. By way of contrast, no such provision was included in the peace treaty with Poland.

Article 2 of the Treaty of Peace with Estonia provided as follows: "On the basis of the rights of all peoples freely to decide their own destinies . . . Russia unreservedly recognized the independence and autonomy of the State of Estonia, and renounces voluntarily and forever all rights of sovereign held by Russia over the Estonian people and territory by virtue of the former legal situation, and by virtue of international treaties, which in respect of such rights, shall henceforth lose their force."

Another case of recognition linked with military intervention was the treaty of November 5, 1921, with Outer Mongolia, which nominally formed part of the Chinese empire and which, prior to the October Revolution, was an area of Russian expansion and penetration. Following the occupation of Mongolia by the Red Army in 1921, the Soviet government signed a treaty of alliance with the People's Government of Mongolia on November 5, 1921. In this treaty the Soviet government recognized the People's Government as the only legal government of Mongolia. This treaty was superseded by the Treaty of Mutual Assistance of March 12, 1936, which acknowledged that the creation of the People's Republic of Mongolia was due exclusively to the Soviet military intervention for protection against foreign intervention.

Another example of recognition combined with military intervention was the recognition of the People's Republic of Tannu-Tuva, which, although a part of Outer Mongolia and China, was occupied by the Red Army in 1921 and set up as a people's republic. In 1944 it was incorporated into the Soviet Union. Other examples of recognition linked with military intervention are gleaned from the setting up of the Democratic Republic of North Vietnam and of the German Democratic Republic as republics of the Soviet type.

C. Recognition of New Regimes

The same pattern may be distinguished in the policy of the recognition of new regimes. In the one hand the Soviet government continued to recognize drastic changes in regimes, such as the emergence of the Nazi regime in Germany. The Soviet government also established and continued to maintain diplomatic relations with the dictatorial regimes in Latin America. Certainly in each case of such a recognition the main consideration was the stability of the new regime and its ability to continue to discharge its obligations

towards the Soviet Union. An important deviation from Soviet diplomatic practice was the refusal to recognize the regime of General Franco in Spain, yet this may certainly be attributed to the fact that the circumstances of the arrival of the Franco regime to power were such as to suggest that recognition of the Spanish regime would have been interpreted as the acceptance of an ideological defeat.

At times recognition of new regimes by the Soviet government amounts to intervention. Twice the Soviet government recognized Polish regimes which were not as yet in control of the Polish state and which could be installed only with the assistance of the Soviet army. In the first case, Soviet government recognized the government of Julian Marchlewski during the Soviet drive on Warsaw (July 30, 1920). The second case followed the rupture of relations with the Polish exile government in London. Here the Soviet government recognized *de facto* and later *de iure* the regime established under the auspices of the Union of Polish Patriots in 1943. Further, the Soviet government recognized the government of Finland headed by Kuusinen following the outbreak of war with Finland in 1939. When Finland failed to collapse, the Communist Finnish government faded away.

To conclude, then it seems that recognition as practiced by the Soviet government signified a temporary acceptance of the status quo resulting from the existence of an organized national entity, irrespective of its regime. The duration of such a regime is contingent upon the prevailing circumstances. A Soviet form of government is not necessarily a guarantee that independence of such a country would always be respected. Indeed, as regards the republics established on Russian territory it was only a step towards incorporation, as in the cases of Ukraine, Georgia, and other Soviet republics.⁵⁷

V. RIGHTS AND DUTIES OF STATES

On two occasions the Soviet government gave a formulation of the basic rights and duties of states in the contemporary international community. In a series of initial decrees it declared that war was a crime against humanity. It further recognized the right of each ethnic group to self-determination. It also recognized the principle of equality of small and great nations and declared the inviolability of national territories of all nations, non-interference in internal affairs, the principle of non-intervention, and the exclusive jurisdiction of each state over its own territory and its own population. The Soviet government renounced unequal treaties concluded between the Russian Empire and China, amongst others, the regime of capitulations.

The right of self-determination was the cornerstone in this system of the fundamental rights of nations. As a catalogue of rights it was mainly directed towards a solution of this national question in Russia. The new rules for coexistence between the nations of Russia were not necessarily to include

the right of international sovereignty, as self-determination was to result either in secession and statehood outside the Soviet family of nations or in the membership in the Union itself.

After the death of Stalin Soviet declarations of the rights of states were made in a different context, viz. that of the regime for all nations of the world, within the principles of the Charter of the United Nations. They were structured as a catalogue of rules determining the regime of peaceful coexistence of states with conflicting interests and with differing systems of property relations. At its base stood the conviction that the contemporary world community was not conceived with a single model of the individual in mind, but with at least three such models; e.g. the citizen of a socialist state, the citizen of a capitalist state, and finally the citizen of an ex-colonial country. These were not interchangeable entities, and consequently standards of international public order could not be measured with regard to the status of the individual, but with regard to the status of the state as the basic unit of the community of nations.

As an element in determining the structure of the international community, the declaration of the fundamental rights and duties of states is both an element of unity and at the same time one of division. With various systems of property relations, various rights and liberties of the individual acquire a different meaning. In a socialist community with a single political party these rights will shape differently as compared with the condition of individual existence in the free societies. Again the same problems will take a different coloring with ex-colonial peoples.

The modern version of rights and duties is linked with the notion of peaceful coexistence. The first formulation of the principle of peaceful coexistence was given in the five points of the Chinese-Indian Agreement on Trade and Intercourse between the Tibetan Region of China and India on April 29, 1954, in a joint statement issued by Nehru and Chou-En-lai on June 28, 1954. The catalogue of rules of coexistence included: respect for territorial integrity and sovereignty, non-aggression, non-interference with the internal affairs of each country, equality and mutual advantage, and peaceful coexistence. At the Bandung conference held in April, 1958, with the participation of 29 African and Asian states, the five principles were expanded into ten such principles.

During the following period the Soviet government and the Communist Party of the Soviet Union on several occasions declared their adherence to the principle of peaceful coexistence. The most authoritative statement in this respect may be found in the Third Program of the Communist Party of the Soviet Union adopted in 1961 which stated:

“Peaceful coexistence implies renunciation of war as a means of settling international disputes, and their solution by negotiation; equality, mutual understanding and trust between countries; consideration for each other’s interests; non-interference in internal affairs; recognition of the right of every people to solve all problems of their country by themselves; strict

respect for the sovereignty and territorial integrity of all countries; and promotion of economic and cultural cooperation on the basis of complete equality and mutual benefit.”⁵⁸

The Soviet government contends that the United Nations Charter incorporated and gave effect to a number of the principles of peaceful coexistence, and Soviet scholars have expanded the principle of peaceful coexistence into an even more elaborate catalogue.⁵⁹ The four principles which constitute the core of the catalogue of peaceful coexistence (abstention from the threat or use of force, peaceful settlement of disputes, non-intervention in matters within the domestic jurisdiction and the sovereign equality of States) were discussed by the United Nations Special Committee on Principles of International Law concerning Friendly Relations and Cooperation among States.

VI. EQUALITY OF STATES AND GREAT POWERS

Rules of peaceful coexistence aim at assuring the sovereign equality of states. Sovereign equality has, on the other hand, a function of assuring the coexistence of individual nations, as well as the coexistence of three systems of states: capitalist, socialist, and ex-colonial nations.

One of the most important characteristics of contemporary international law is that it represents an agreement of all or almost all states. As Mr. Tunkin speaking at the International Law Commission explained:

“The present international society was composed of sovereign States, and agreement between them was the only possible way of creating norms of international law binding upon all States. The time has passed when a group of States could create and enforce norms which they claimed to be binding on all States regardless of their consent. It has been suggested or at least implied by some members that the majority of States could preclude a minority from participating in international affairs of interest to all States. His own view was that all those who favored the progressive development of international law should support the ‘all States’ formula.”

First, all states had to be given access to participate in making treaties which had general significance. Second, rules of international conferences and generally rules of international organizations should guarantee that minorities would be protected against the imposition of majority views.⁶¹ The general capacity of all states to participate in making international treaties was due to the new role of treaties in developing the principles of international law:

“A treaty could be universal in character, either because its object was one of universal interest, or because it created rules intended to be universally accepted. In modern times, many rules of international law were created by treaty rather than solely by custom. Hence it was not only illogical, but also illegal, to exclude any State from participating in treaties which deal with

matters of general interest and concern the rights of all States.”⁶²

On another occasion, Mr. Tunkin expressed the opinion that:

“One of the fundamental principles of international law was that of the equality of States, from which it followed that all States had equal rights to participate in settling problems which were of general interest.”⁶³ “Treaties dealing with matters of legitimate interest to all states should be open to participation by all states. In that way, the principle of equality of states would be safeguarded and no State or group of states would be able to exclude any other state or group of states from negotiating and participating in a treaty dealing with matters of common concern.”⁶⁴

The fullest *expose* of the modern international law rules as regards the drafting of the multilateral treaties was given by Tunkin on June 8, 1962:

“Treaties relating to matters of interest to all states should be open to the participation of all states, and no group of countries had the right to debar any state from participation in such treaties: in international relations, no particular group of countries was entitled to lay down rules on matters of common interest.”⁶⁵

Certainly, conventions and treaties adopted by a conference and ratified by the majority of states did not constitute a law for other participants in the conference who had refused to ratify a treaty or convention:

Such an instrument was only binding universally if it formulated general rules of customary law, and in that case its binding nature was not based on the fact that the rules had been incorporated in a convention. In other words, a majority of States was not in a position to dictate to the minority.”⁶⁶

The right to participation in treaty making processes by all states was matched by the Soviet opposition to the principle of a simple majority as regards the work of international conferences. Mr. Tunkin insisted that the two-third majority rule, as demonstrated by the practice of international conferences, seemed to be a residuary rule: “It would not promote friendly relations between States if the Commission were to recommend a simple majority rule, which would constitute a constant temptation to impose upon certain states the text of some future treaty.”⁶⁷ On the whole he was inclined to leave the matter of rules of procedure at the international conferences open and have them decided by each conference as it convenes. As the International Law Commission report indicates: “Mr. Tunkin could not agree with Mr. François that the simple majority rule for the adoption of rules of procedure constituted existing practice. Surely, no majority of States represented at a conference could force a minority to accept a particular rule of procedure. If Mr. François were right, rules of procedure once adopted became *ipso facto* obligatory on all participants, which was patently absurd, since any delegation finding these rules unacceptable could leave the conference.

If any rule could be claimed to exist concerning the adoption of the rules of procedure it must be the unanimity rule. But he did not believe all events had a need for provision of the subject. . .”⁶⁸

In a broader context, the same principle was reflected by the fact that all member countries of the United Nations have one vote only. At the same time the guarantee that the majority shall not impose its views upon the minority was realized by the provision of the unanimity decision of great power members of the Security Council.⁶⁹

In this manner the principle of equality of states in the area of treaty-making power, as interpreted by the Soviet Union, was a reflection of the fact that the international community was composed of sovereign states and also of the systems of states. The real purpose of the states' rights was to prevent dictation of the world public order by the states which at a given moment had a specific interest in adopting a certain legal solution. This was and still is true as regards such areas of legal regulation as the law of the sea, where maritime powers were able to impose a regime corresponding to their shipping needs and interests: the regime of the air, and the regime of space.

While on the one hand the Soviet government promotes the idea that all states have the right to participate in resolving legal problems and establish international regimes in matters of universal interest, on the other hand it sometimes adopts a highly restrictive attitude as regards the scope of such interests. This in particular was demonstrated in the successful effort to restrict the power to decide and regulate the matter of the Danubian navigation to the riparians only, excluding all other users of the Danube as an international waterway, and the unsuccessful attempts of the Soviet government to establish similar regimes for the Baltic Sea and Black Sea.⁷⁰

In the Soviet view the concept of equality of states in modern international law is intimately linked with the idea of sovereignty. Mr. Koretsky, a member of the International Law Commission, was insistent that equality of states was not enough to describe the position of states in modern international law: "... the affirmation of the juridical equality of states should be strengthened by a mention of their sovereign equality — a term which was entirely unambiguous. The refusal to use it would be to run counter to the democratic evolution of international law . . ."⁷¹

"The Commission should approach its task in the light of the new trends in international relations which had an impact on the development of international law; it should take into account recent changes in international law and the new rules that were being developed. The well-established principles of contemporary international law included that of the equality of States, by virtue of which all States were equal as sovereign entities and subjects of international law . . ."⁷²

The concept of equality was limited by a number of situations in which states could not always act as equal members of the international community. For example, treaties could be imposed upon states guilty of aggression. Quite apart from the question of their responsibility, aggressor states were not in a position of equality as regards the issues over which they went to war:

"... the aggressor was not on the same level as the victim. A state guilty of

starting a war was performing illegal acts, whereas the victim was using force legitimately . . . States which had taken part in resisting aggression were entitled to dictate or impose terms on the aggressor . . .”⁷³

And, “. . . sanctions imposed upon an aggressor State have their source not in the law of treaties, but in the law of State responsibility. In the case in point, however, the law of State responsibility had a direct bearing on the law of treaties and called for an exception to the rule stated in article 59. It was true that in 1964, the Commission had introduced a safeguard in the commentary but, as was well known, the commentaries would not endure beyond the conference of plenipotentiaries. After the commentary had disappeared, the concluding words of article 59 would remain: “and the State in question had expressly agreed to be so bound.” Those words could be used by an aggressor State to repudiate its obligations, claiming they referred to *res inter alios acta*. Contemporary practice provided an example: not only writers in Western Germany, but even the government was contending that the treaties concluded by the Allied Powers at the end of the Second World War were without effect with respect to Germany, which was not a party to them and could therefore disregard them.”⁷⁴

Another type of limitation of sovereign equality lay in obligations concerning the policy of neutrality, as agreed in connection with the Austrian State Treaty of May 15, 1955. Mr. Tunkin observed that an obligation not to become a party to an international Treaty was not a limitation of sovereignty, as it was the result of a treaty obligation, and therefore resulted from the exercise of the sovereign right.⁷⁵ Otherwise the only limitation of the sovereign equality, particularly as regards the right of legation or participation in international agreements, could evolve from the constitutional provisions for a member state of a federation, or for a federal state as such. This, however, was not a question of international, but rather of constitutional law.⁷⁶

While the Soviet government's position regarding the status of individual nations in the contemporary international community was determined with reference to the principle of self-determination and sovereign equality, at the same time the Soviet government was keenly conscious of its great power position and its influence in world affairs. The Soviet Union always felt entitled to use its force and influence in the world to gain a dominant position in world affairs in various areas of international relations. The most obvious example, directly associated with the role and character of the Soviet government, was the Soviet conviction that social and political processes in the Soviet Union were of singular importance for the rest of the world. Events in Russia, as well as in other great nations, had a power to influence similar processes elsewhere; and in this respect great powers, and in the first place the Soviet Union, should bear a responsibility for initiating them. The Decree on Peace which formulated the aims of Soviet foreign policy addressed itself to the proletariat of the three leading nations, France, Britain, and Germany, appealing to their sense of responsibility for ending the war and establishing the new order.

The Soviet Union also felt entitled to claim its position as a great power and successor of the former imperial regime. The early period of Soviet diplomacy abounds in various claims advanced by the Soviet government to be admitted to the councils of great powers in order to influence their future course in the interests of Russia.

The Soviet Union protested to governments of Finland and Sweden against omitting Russia from a conference to establish the regime for the Aaland Islands.⁷⁷ It claimed that the self-determination process to determine the future of those islands should also involve the agreement of the working masses of Russia, whose security interests are involved. It also protested to the governments of the Allied powers (December 22, 1922) against omitting Russia and Byelorussia from decisions regarding the regime of Port Memel.⁷⁸ In 1925 the Soviet foreign commissar addressed a note to the Danish government demanding an explanation regarding the plans to deepen the Danish Straits and to admit not only larger merchant vessels but also larger naval units into the Baltic Sea (Soviet note of June 8, 1925). The Soviet government felt that this action would effect a change in the balance of power in that area.⁷⁹

During negotiations regarding the organization of the conference in Lausanne on the Turkish Straits, the Soviet government insisted on participating not only in the negotiations on the regime of the Straits, but also in the general settlement of the problems of the Middle East.⁸⁰ The Soviet Union also insisted on being admitted to the conference to revise the General Act of Algeciras (Soviet note of September 2, 1926), and also to participation, as a great power, in the Washington Conference of 1921, not only as regards the limitation of armaments but also with regards to the China policy.⁸¹

While the Soviet Union had rejected all attempts to submit her treatment of minorities to international adjudication, despite the fact that its treaty obligations vis-a-vis Finland were quite explicit,⁸² at the same time it insisted upon claiming the right to intervene on behalf of the minorities in Poland, although the provisions of the Peace Treaty of Riga stipulated renunciation of all Russian claims to the territories that were recognized as an integral part of Poland.⁸³

As a great power, the Soviet Union had claimed a special position in Eastern Europe which it regarded as a sphere of influence. The military weakness of the Soviet Union during the interwar years, and the influence of great Western powers, particularly France, had denied the Soviet Union an opportunity to realize its ambitions during that period.

Following the signing of the Ribbentrop-Molotov Pact (August 23, 1939) the Soviet Union was able to rearrange the political structure of that part of Eastern and Southeastern Europe which then came under the exclusive Soviet-German political influence. Its territorial gains ranged from the Baltic Sea to the Black Sea. In cooperation with Hitler's Germany it removed a number of states from the list of independent nations. The partition of Poland provided an example of the technique to be used in the settlement of

Soviet territorial claims to other countries. Poland was partitioned and, on the initiative of the Soviet Union, it was decided not to tolerate even a rump Poland. A secret Supplementary Protocol, to the Delimitation Treaty of September 28, 1939, stipulated that Soviet and German governments would "...tolerate in their territories no Polish agitation which affects the territories of the other party. They will suppress in their territories all beginnings of such agitation and inform each other concerning suitable measures for this purpose."⁸⁴

Soviet accession to the Grand Alliance following the German attack on Russia changed the composition of the directorate of the great powers but not the principle of the control of the affairs of smaller nations by the concert of great powers. The decisions of the main members of the Grand Alliance (US, USSR, Great Britain, and later France) were to provide foundations of the new world order binding upon the smaller nations. Their effect was not limited exclusively to their political impact upon the relations between the states. They had a direct legal meaning. Typical in this respect is the provision of the Soviet Polish Delimitation Treaty of August 16, 1945, Article I, which provides as follows:

"In accordance with the decision of the Conference of Crimea the state frontier between the Union of the SSR and Polish People's Republic is established along the Curzon Line . . ."⁸⁵

Mr. Tunkin formulated the new principle that smaller states were under a legal obligation to accept agreements between great powers as far as they affect matters of their interest as:

"... an exception to the rule *parta tertiis nec nocent nec prosunt*. It was a case of extending the sphere of application of a treaty to a State which was not a party.

"He agreed . . . that certain treaties could be binding upon third States. For instance, the agreements regarding Germany made by the Allied Powers at the end of the Second World War were undoubtedly binding on the two successor States existing in Germany. The basis of that obligation was State responsibility: the treaties relating to Germany were binding because of the international responsibility of Germany for waging aggressive war."⁸⁶

According to this formulation it would be possible to dispense with the formality of concluding a peace treaty with a defeated power, provided that the great powers are agreed upon the principles of the regime to be imposed upon the vanquished party. Theoretically, this rule applies only if the vanquished party is also an aggressor state. Nevertheless, the fact that the principle of Great Power rule may be applied to the victim of aggression, as in the case of Poland, suggests the real implication of the new Soviet doctrine.

While in the traditional international law sovereignty and equality of states signified that the influence of Great Powers was a political and not a legal principle, the Soviet Union claimed that in the new order, ushered in by World War II, this principle was accepted as a principle of international law.

Within the Socialist Commonwealth of Nations the Soviet Union became

an exclusive influence directing its destinies. Within the world community, especially in the United Nations Organization, the Soviet Union exercised a leading role in concert with the permanent members of the Security Council. This role is based upon the Charter of the United Nations. Vyshinski, the Soviet delegate to the General Assembly, explained the Soviet position in this respect in his speech of November 21, 1947. The position of Soviet government, Vyshinski said, was that in terms of the United Nations Charter, the leading role of the Great Powers was expressed in the principle of unanimity of the permanent members of the Security Council which was formulated in a number of international documents, including a letter by President Roosevelt to Marshal Stalin on December 14, 1944; in the decisions of the Yalta Conference of February 7, 1945; and in the San Francisco Conference where the United Nations Organization was established. The principle of unanimity had two functions. First, it guaranteed the preservation of the vital interests of great powers. Second, it assured their cooperation in the maintenance of peace on the basis of the respect for those interests.⁸⁷

VII. RESPONSIBILITY OF STATES AND WAR REPARATIONS

The liability of states for their actions must be strictly distinguished in terms of the law that governs the relations in which those "acts of liability" are rooted. Due to the government ownership of means of production and its monopoly of industry and commerce, the Soviet state acts in a dual capacity. As a sovereign power, and in relations with other members of the international community, its actions are under the rule of international law. Should it become liable financially, or otherwise, its responsibility and the extent of its liability must be determined by that legal system. The Soviet government's agreements with other foreign governments are, of course, international agreements.

This type of responsibility must, however, be distinguished from liability incurred in contracts and other transactions made by Soviet governmental organizations that are separate legal personalities as determined by Soviet law and which act on the basis of special authorization to make contracts and enter into business transactions with foreign trading organizations, whether private or governmental. In this category are also contracts made by Soviet trade delegations with foreign trade organizations, companies, individual merchants, or firms. Transactions of this type are under the rule of municipal law according to the circumstances of each case, as indicated by the provisions of the particular treaty of commerce and navigation in force between the Soviet Union and the respective state, or according to the rules of private international law of the *lex fori*.⁸⁸

In the present context two types of situations are considered which may result in responsibility under international law. A state is liable for acts of a

responsible government agency directed against another state which are contrary to rules of international law. Such acts may be directed against the rights of nationals of foreign states, or directly against such states.

It is contended by the Soviet government that the principle of governmental responsibility for acts undertaken on its territory either affecting the rights of aliens or those of other governments are substantially affected by changes in the concept of sovereignty and by the emergence of the socialist system of property relations.

At the Brussels Reunion of the International Law Association (1962), which had been discussing the concept of peaceful coexistence since its Dubrovnik meeting (1956), the Soviet delegation submitted a Draft Declaration of the Principles of Peaceful Coexistence, which included the following point (4):

"The right of peoples and nations to self-determination, . . . also includes inalienable sovereignty over their natural wealth and resources. People may in no case be deprived of means of subsistence belonging to them by any title, whatsoever, claimed by any other state; colonialism in all its forms and manifestations must be done away with."⁸⁹

The principle of control over national resources, confirmed by a Resolution of the General Assembly, stands at the foundations of the system of legal rules dealing with the responsibility of states for breaches of international obligations.

"The problem of State responsibility," Mr. Tunkin asserted in the International Law Commission," reached down to the very foundations of contemporary international law. It was therefore essential to bear in mind the recent developments in international relations and international law, which were due to the progress of human society . . . Present day international law could not be a system of legal rules imposed by the States belonging to one economic system on States belonging to another; worldwide international law could not contain rules which were incompatible with the principles of one of two main economic systems . . . Aliens must not be regarded as a privileged group enjoying special privileges. The fundamental principle was that they must be subject to the law of the country of their residence. Individuals, whether nationals or aliens, were not, in fact, subjects of international law at all . . ."⁹⁰

Two years later in discussing the Harvard Draft of the Declaration regarding the Responsibility of States, Mr. Tunkin explained that they were related not so much ". . . to State responsibility properly so-called as to the rights of aliens, especially those relating to property. Some of those problems were closely connected with the existence in the world of two different economic systems . . . The rules proposed in that draft concerning the expropriation of the property of aliens were based on the principle of the sanctity of private property. In the third and fourth decades of the twentieth century, the question of State responsibility had been discussed from one point of view only, and the existence of a new economic system had been

practically ignored. At that time, certain States might have hoped that the new system would disappear or that they would be able to impose certain rules on the only socialist State then in existence. At the present juncture, however, it was inconceivable that the principles of one system would be accepted as general international law."⁹¹

The new approach to the problems of the responsibility of states was the result of the fact that the position of aliens in the socialist and capitalist countries could not be described in comparable terms which would meet international standards. "At the present time," wrote Professor Lunts, "when on our globe two systems, the socialist and the capitalist, coexist, the theory and practice of private international law of any country must rely on the principle of full and unconditional recognition of the fundamentals of the socialist order . . . It includes, in the first place, recognition of the fact that the decrees of the revolutionary government in the early days of the Soviet Union have established a new regime of property relations. Recognition on the part of bourgeois states of the socialist laws on the abolition of private property rights over the instruments and means of production is directly related to recognition of the socialist system of property relations."⁹²

According to Soviet internal legislation, the position of aliens resident in the Soviet Union with regard to their status, property rights, personal and family relations, must be determined exclusively with regard to Soviet internal law.⁹³

Presence of common standards in force between the socialist and capitalist systems seems to be ruled out by the text of the circular letter of the People's Commissariat for Foreign Affairs of April 12, 1922, which established Soviet claims as regards the treatment of Soviet citizens in foreign countries:

"The legislation of any country that has established a system of property law has effect only within the territorial confines of that country, but within these confines it extends to all property relations irrespective of the nationality of persons involved in such relations. Therefore, the regime of property rights established by the decrees of the Russian Soviet government regulates only property in the territory of the RSFSR. But legal relations pertaining to property which is located outside the territory of the RSFSR and connected with it . . . are subject to local legislation, regardless of the nationality of persons involved in such legal relations, even if they are Russian citizens.

"Thus, if a given institution is, in general, recognized under the local laws, then the fact of non-recognition of this institution by our legislation need not in itself be an obstacle in the way of protection of a given right by our diplomatic representatives and consulates, as a matter of general protection of the legitimate interests of Russian citizens."⁹⁴

It also seems to be questionable whether the early Soviet practice of according damages for injuries caused by Soviet authorities to British subjects is any indication of the present attitude of the Soviet government in similar situations. Under the threat of breaking diplomatic relations, the Soviet government agreed to pay compensation for the imprisonment of a British

journalist and for the execution of another British subject. The Soviet memorandum indicated, however, that the Soviet government did not recognize the existence of any liability on its part and denied existence of any irregularity for which it could be held responsible.⁹⁵

The Soviet government also refused to be held liable for the uncompensated confiscation or nationalization of property of aliens, claiming that the October Revolution had established a new regime which ruled out any respect for the private rights of ownership and property in general, including the property rights of foreign nationals.⁹⁶

Formally the Soviet government adhered to the principle of state responsibility for the action of its agents injurious to the person or property of aliens. It declined, however, to recognize that these were measurable against international standards of the treatment of aliens. Its position was that the status of aliens in the Soviet Union and the position of Soviet citizens abroad was a matter of internal legislation, accepting in this respect the principle of a national regime, and basing upon this principle, the demand that Soviet citizens abroad should enjoy rights of property and inheritance which were denied them at home.

However, even within these narrow limits the responsibility of the Soviet state is practically of no significance. Property rights of individuals are restricted to objects of personal use. Land is the property of the state, and ownership of dwellings and houses is controlled by various regulations affecting their use. Personal property is increasingly subject to various restrictions dictated by local needs and planned change in social conditions.

The other area in which the state may incur responsibility is violation of rules regarding the treatment of persons in proceedings against the person of the alien. In this respect, it must be noted that powers of the administrative authorities and courts in the Soviet Union are so vast that any action may be justified by adherence to the codes and regulations in force. With the Soviet government's negative attitude towards judicial settlement of claims against it, those injured by the Soviet governmental action have, indeed, little prospect of obtaining compensation.

Soviet position in regard to the responsibility of states is vitally affected by the fact that the economic interests of the Soviet Union abroad are advanced by government action and not through the private initiative of its citizens. Consequently its interests can hardly be affected by the treatment of Soviet citizens resident in foreign lands. The interests of reciprocity is, therefore, almost entirely lacking. The concept of responsibility is directed towards realization of values of a different order. As Mr. Tunkin, the Soviet member of the International Law Commission, explained, under modern international law "... state responsibility arose not so much out of the treatment of aliens, as out of actions which endangered, or could endanger international peace or friendly relations between states ... [I]n the traditional international law of state responsibility, attention had been focused on such problems as denial of justice, exhaustion of local remedies, responsibility for *ultra vires*

actions and the problem of reparation. These problems, had, of course, not become obsolete, but their relative importance had greatly diminished. In the modern international law of responsibility for actions which violated or threatened international peace, such questions as denial of justice and the exhaustion of local remedies, were quite irrelevant.

On the other hand in the new fields of international responsibility, the problems of sanctions and other consequences of breaches of the rules of international law became more prominent.⁹⁷

The effect of the violation of law is that a change occurs in the legal position of the aggressor. Aggression deprives the aggressor of those benefits which are the consequences of the world public order based on international law. As Mr. Tunkin suggested to his colleagues on the International Law Commission:

"... the aggressor was not on the same level as the victim. A state guilty of starting a war was performing illegal acts, whereas the victim was using force legitimately, so that the two sides were no longer on the same footing... Only States which had taken part in resisting aggression were entitled to dictate or impose terms on the aggressor..."⁹⁸ It was Mr. Tunkin's view that aggressor states were bound to conform to terms of the treaty imposed upon it even without the peace treaty.⁹⁹ Indeed it was bound by the sanctions and the agreement between the states imposing such sanctions.

At the present time the responsibility of states for acts of aggression is based upon the prohibition of aggressive wars in the Charter of the United Nations:

"The principles of the Charter were principles of general international law and as such were binding upon all States. The prohibition of the use of force, as embodied in the Charter, had replaced the old rule of international law which used to acknowledge the right of a sovereign state to wage war—the *jus ad bellum*."¹⁰⁰

The aggressor state is bound to pay reparations fixed by the victorious powers. The peace treaties with Rumania, Hungary, Finland and Italy imposed a duty on them to pay reparations to the Soviet Union. The reparations from Hungary, Bulgaria, Rumania, and Italy were set in fixed sums. As regards Germany, the Soviet Union claimed the sum of 20 billion dollars. The principle of German liability was accepted but the final sum of reparations due from Germany was not fixed. In the case of Italy and Germany, the property of those states and the economic assets of their nationals that were bound in Bulgaria, Hungary, Rumania and Finland served to satisfy the Soviet claims.

In this system of reparations the Soviet right to satisfy itself from German and Italian assets constituted the main item. According to some estimates, Soviet interests acquired in Bulgaria, Hungary, and Finland had a value of some 600 million dollars. On March 8, 1947, a decree issued in Hungary enumerated 95 companies, 37 corporations and 69 private firms and cooperatives which were considered as German assets and were being converted to

Soviet ownership. In Rumania, the Soviet Union acquired over one-third of all Rumanian enterprises, 396 industrial and commercial establishments, 33 oil firms, and 97 banking and insurance institutions.

The issue of reparations is closely connected to the right to war booty, which the Soviet Union claimed not only on its own or enemy territory but also on the territory of allied states. In its traditional meaning, war booty includes objects of enemy equipment, arms, transport, etc., which the enemy employed in military operations. It certainly does not include, according to the traditional practice, the rolling stock, railway equipment and fixed facilities which were used by the enemy under temporary requisition. The Soviet government extended the concept of war booty to include all items of property owned by the enemy state or its citizens which were to be found in the area of military operations including factories, transportation facilities, power stations, etc., even including that found on the territories of allied countries. Acting on this principle the Soviet Union removed vast quantities of industrial installations, machinery, tools, and power generators from Poland, Czechoslovakia and Manchuria, which, though under Japanese occupation and organized as a separate state, was a part of the Republic of China.

Damage caused to the economy of those three countries was considerable. The American Reparations Commission, which visited Manchuria in June, 1948, estimated the damage, due to removals, at \$ 858,000,000.¹⁰¹

East Germany, which came under Soviet occupation, was exposed to direct Soviet control of her natural resources. There direct Soviet management of industrial enterprises was widely practiced. There was no central government and the Soviet Union was given a blank authorization to satisfy its claims for war damages from the current production of East German industries under its control.

Ownership of various companies, factories, banks, insurance companies; and the takeover of obligations of the Bulgarian, Hungarian, Finnish and Rumanian firms to the German and Italian nations presented considerable problems of collection, liquidation and management. In important fields of economic activity (oil, mining, ship building, Danubian shipping, etc.) the Soviet Union established joint companies which monopolized the industrial and commercial activity in those various areas and put them under Soviet control. A similar situation developed in Manchuria and North Korea.

Even before Stalin's death the Soviet Union announced on several occasions a reduction of the reparation sums claimed by it or the sale of factories, banks, insurance companies, and transport facilities to the governments of former enemy countries. The process of the liquidation of the joint stock companies began in 1953 and ended sometime in 1957. This involved Soviet interests in North Korea, China and the Eastern European countries. The emancipation of East Germany and its establishment as the German Democratic Republic was also combined with a gradual liquidation of direct Soviet control over various industrial establishments in Germany.

The case of Finland was somewhat different. War reparations and Soviet ownership of Italian and German assets served to establish control of important areas of economic activity in Finland. Reparations were partly covered by cessions of Finnish territory, concessions for the exploitation of the nickel mines and the purchase from Finland of power installations, etc. In 1948, following the signing of a treaty of friendship, cooperation and mutual assistance, the Soviet Union reduced its claims to Finland by half.

Soviet reparations policy in the post-World War II period represents a total departure from the principles which the revolutionary government of Russia has established as to the conditions of peace to end World War I. At the time the Soviet regime accepted the principle of no contributions or annexations.

Following World War II the Soviet Union exacted contributions and reparations not only from the enemies of the Soviet Union. Poland, for example, (an Allied country) was forced to deliver annually considerable amounts of coal at a nominal price, well below the extraction cost. Czechoslovakia paid for Soviet assistance in her liberation by important economic concessions including a monopoly for the exploitation of uranium mines in Czechoslovakia.¹⁰²

VIII. SOVIET UNION AS THE MEMBER OF THE INTERNATIONAL COMMUNITY

A. Formation of the Soviet Union

The October Revolution split Russia into a number of territorial units, each claiming their independence and statehood. The largest the Russian Soviet Federated Socialist Republics included all the predominantly Russian territories with enclaves settled mainly by the non-Slavic ethnic groups, with the exception of the Russian Far East which for some years was organized as a separate Soviet Socialist Republic. Alongside this development a number of other republics, some of them Soviet and socialist and some of them not, came into existence.

While the Bolshevik regime formally or informally acknowledged the separate existence of these various territorial organizations, there was a tendency to establish joint policies and even central administrations at certain important areas of activity, such as railways, currency, communications, etc. Cooperation in those various areas of common interest led towards a series of agreements to channel cooperation and policy making in certain areas and to the establishment of a more durable framework for realization of common aims and goals. The first such pact was the military and political cooperation pact with the Ukraine.¹⁰³ Similar agreements were later concluded with Byelorussia, Georgia, Armenia and Azerbaijan. These treaties

were followed by agreements dealing with economic matters and especially railways, which came under the common railways administration in Moscow. Finally, a veritable system of central administration, dealing with the defense, railways, currency and economic planning was set up under the All Russian Conference of Soviets with an Executive Committee.

In spite of the rapidly advancing process of integration, the governments of the individual republics preserved their titular capacity to maintain international relations with other countries, although in fact this power was rarely exercised. The first occasion on which Soviet republics decided to take joint action as a unit in international relations with the capitalist countries and thus abandon for that purpose the exercise of their sovereign prerogative was the Protocol of February 22, 1922, signed by the RSFSR, Azejbardjan, Armenia, Bukhara, Georgia, Far Eastern Republic, Ukraine and the Soviet Republic of Khorezm which authorized the RSFSR delegation to represent the other sister republics at the Economic Conference of Genoa. On the basis of these full-powers the RSFSR delegation signed the Rapallo treaty with the German delegation on April 16, 1922.

The next step was the Treaty and Declaration of the Union signed on December 30, 1922, by the RSFSR, Ukrainian SSRR, Byelorussia and the Transcaucasian SSR. The Transcaucasian SSR consisted of the three Transcaucasian republics which had been joined in a separate federation. The Far Eastern Republic joined the RSFSR on November 15, 1922.

Since the establishment of the Union, the number of the Union's republics has grown considerably. On February 17, 1925, the Uzbek SSR and Turkmen SSR, consisting of the territories which belonged to Khorezm and Bukhara and certain districts which formed a part of the RSFSR, were established. On December 5, 1929, Uzbekistan was split into the Uzbekistan and Tadzhikistan Soviet republics. On December 5, 1936 (already under the regime established by the Constitution of 1936) the Transcaucasian Federation was dissolved, and Georgia, Azejbardjan, and Soviet Armenia were given the status of union republics. On the same date the territories of the RSFSR with the Kazakh and Kirgiz populations were established as separate union republics.

The law of March 31, 1940, admitted into the Union the Karelo-Finnish SSR consisting of the Karelian Autonomous SSR which was a part of the RSFSR and the Finnish territories detached from Finland on the basis of the treaty of peace of March 20, 1940. It was reduced in size in 1944, and in 1956, owing to the changes in the ethnical structure, flight of Finns and influx of the Great Russians, it was again incorporated into the RSFSR as an autonomous republic.

On August 2, 1940, the Moldavian SSR consisting of territories of the Moldavian ASSR, which was a part of the Ukraine, and the territories ceded by Rumania was established. And on August 3, 5, and 6, 1940, the three Baltic republics, Lithuania, Latvia, and Estonia were incorporated into the Soviet Union as union republics.

B. The Union and the Union Republic as Subjects of International Law

The first Constitution of the RSFSR (Russian Soviet Federated Socialist Republic) of July 10, 1918, set up Russia as the federation of various national republics with autonomous status in their internal affairs, and with the right to represent them in international relations vested in the Federation. Constitutions of other Soviet republics usually also contained similar provisions, although some of them were silent in this respect.

The agreement on the establishment of the Union and the creation of the federal government of December 30, 1922, reserved to the jurisdiction of the supreme authorities of the Union the following areas: the conduct of international relations, including representation of the Union in international relations; modification of the international frontiers of the Union; the admission of the new republics into the Union; declaration of war; conclusion of peace; negotiation of foreign state loans; ratification of international agreements; and creation of the foreign trade system. Article II of the agreement provided for the creation of the People's Commissariat for Foreign Affairs at the federal level.

This system was incorporated into the Constitution of the Union of January 31, 1924, which listed among the people's commissariats of the Union a People's Commissariat for Foreign Affairs (Article 37).

The pattern established in the Treaty and Declaration of the Union and the 1924 Constitution was repeated in the Constitution of 1936. Federal jurisdiction continued to include all aspects of foreign relations. As in the 1924 Constitution, the Commissariat for Foreign Affairs was listed in the 1936 Constitution as an All Union Commissariat. Thus, union was a unitary subject of international law in spite of the fact that within the union a federal system of government was maintained.

At the end of World War II the law of February 1, 1944, gave each Union republic the right to establish direct relations with foreign countries, make agreements with them and exchange diplomatic and consular representatives. At the same time, the Union republics were authorized to establish their own commissariats (ministries) of foreign affairs.

Although according to the new text of Article 60 of the Constitution the decision to enter into direct relations with foreign countries was within the exclusive jurisdiction of the Supreme Soviet of a given Union republic, their commissariats of foreign affairs are exercising this function under the control of the Commissariat of foreign affairs of the Union. The law of February 1, 1944, transferred the USSR Commissariat for foreign affairs from the All-Union category to the Union-Republic class of people's commissariats.

The difference between these two classes of commissariats lies in the fact that the All-Union commissariats (ministries) have no counterpart in the governments of the individual republics. The Union-Republic commissariats have corresponding commissariats in the governments of the individual

republics and control their activities. It may be presumed that this applies under the present system to the ministries of foreign affairs functioning on the level of those republics which had decided to establish such ministries.

Transformation of the Commissariat for Foreign Affairs of the USSR from the All-Union to Union-Republican class has hardly affected the international representation of the Soviet Union. Soviet foreign service (diplomatic, trade and consular) is still subordinated to the Union and not to the individual republics. Only some of the Union Republics have concluded international agreements with foreign countries or participated in the activities of international organizations. It is interesting to note that the first People's Commissar of the Ukrainian SRS was Mr. Korneichuk, who held until then the position of the Deputy Commissar for Foreign Affairs of the USSR.

The law of February 1, 1944, was directly related to the Yalta Conference (February, 1945) where Stalin put forward a demand that all Soviet Republics should be made members of the United Nations. He finally agreed to accept separate membership (in addition to the USSR) for the Ukraine and Byelorussia, who were also the founding members of the UNO. The Ukraine participated in the Danubian Conference in Belgrade, 1948, signed the new Convention and then made the declaration that its interests in the Commission would be represented by the delegate of the Soviet Union. Otherwise, neither Byelorussia, the Ukraine, nor any other Union Republic participates in the international organizations of the Socialist Commonwealth of Nations, apparently in the conviction that the presence of the Soviet Union assures adequate protection of their interests. While the Ukrainian government considered it useful to take part in the Belgrade Conference of 1948, it did not participate in the signing of the Danubian fisheries convention of January 29, 1958, although Ukrainian authorities would have been primarily concerned with the enforcement of its provisions.

In addition to membership in the UN, Ukraine and Byelorussia are members of the following organizations; United Nations Economic Commission for Europe, International Court of Justice, International Telecommunication Union, Postal Union, World Meteorological Organization, World Health Organization, and Unesco. The Ukraine, in addition to the Soviet Union, is also a member of the *Office International de la Vigne et du Vin*.

In 1949 the Soviet Union, Ukraine and Byelorussia expressed their dissatisfaction with some aspects of the activity of the World Health Organization and notified the Organization that they no longer considered themselves to be among its members. In 1957 the Soviet Union, but not Ukraine and Byelorussia, notified the Organization that it would resume active participation in the work of the Organization.

None of the Soviet republics maintain embassies or legations in other countries, although the terms of the law of February 1, 1944, clearly authorizes them to do so. The only form of diplomatic representation are the permanent Ukrainian and Byelorussian delegations at the UNO.

Both the Ukraine and Byelorussia are parties to numerous international treaties and conventions, mainly those prepared under the auspices of the United Nations. Outside the Ukraine and Byelorussia only the Lithuanian SSR has had a hand in the conducting of her foreign affairs. During 1944, while World War II was still in progress, Lithuania was one of the three republics that concluded an exchange of population agreement with Poland.¹⁰⁴

C. The Soviet Union Discontinuity and Succession

The position of the Soviet Union in international affairs must be described in relation to two seemingly contradictory principles. The Soviet Union described its position in international relations claiming a total breach with the Russian Empire. At times, however, the Soviet Union claims rights which accrue to it as successor to the former regime of Russia.

In the initial years of the Bolshevik regime Soviet policy emphasized the principle of discontinuity. It was asserted that the new regime, and consequently its position in the world was based upon a new attitude to its rights and duties as a subject of international law.

Marx in his analysis of the history of the Paris Commune (1871) came to the conclusion that a socialist revolution differs basically from any other similar event resulting in the creation of a new regime. The socialist regime cannot preserve institutions inherited from the bourgeois state. Lenin and Stalin in their turn held that this view was confirmed by the October, 1917 revolution in Russia. A socialist revolution consists not only of the seizure of power but it also involves a total and violent break with the past, repudiation of old laws and a destruction of all governmental institutions of the former state. They argued that this was explained by the scope of the revolution. While the bourgeois-democratic revolution left the social and economic system based on economic exploitation of the proletariat intact, the socialist revolution involved the abolition of exploitation and the creation of a classless society.

The outside world was treated to a full expose of Soviet views as regards the international law position of the Soviet state on the occasion of the Economic Conference of Genoa (May, 1922), convened to restore the political and economic unity of Europe. In the memorandum submitted to the Conference on May 11, 1922, the Russian delegation stated that "... revolutions which are a violent rupture with the past carry with them new juridical relations in the foreign and domestic affairs of states. Governments and systems that spring from the revolution are not bound to respect the obligations of the fallen governments."¹⁰⁵

However, the application of the doctrine of discontinuity has never been an absolute rule and was applied rather selectively to the obligations assumed by the former Russian imperial regime. The decree of the Council of

People's Commissars of January 28, 1918, annulled all foreign loans "finally and without exception." The decree of October 28, 1917, on peace declared void all secret treaties concluded by the previous regime insofar as these treaties were intended to benefit Russian landowners and capitalists. In a declaration addressed to the Moslem workers of Russia and of the Orient on November 24, 1917, the Council of People's Commissars declared treaties concerning Turkey and Persia to be abrogated. Lastly, in the treaty with Turkey of March 16, 1921, the Soviet government declared that the capitulatory regime in Turkey was annulled. Similar treaties were concluded with Persia (February 27, 1921) and China (May 31, 1924). The difficulty of absolute adherence to the principle of discontinuity is best illustrated by the resolution of the Soviet government of August 29, 1918, concerning Poland. It stated:

"All agreements and acts concluded by the Government of the former Russian Empire with the Governments of the Kingdom of Prussia and the Austro-Hungarian Empire in connection with the partition of Poland, are annulled forever by the present Resolution, in view of the fact that they are contrary to the principle of the self-determination of peoples and to the revolutionary, legal conception of the Russian nations, which recognized the inalienable right of the Polish nation to decide its own fate and to become united."¹⁰⁶ While on one hand the resolution stressing the "revolutionary legal conception of the Russian nation" invoked the principle of discontinuity, on the other hand it exercised the right to denounce a series of treaties of the former imperial regime—thus indicating it adhered to the principle of succession to the rights of that regime.

The treaty of Riga of March 18, 1921, which established peace between Russia and Poland, is a clear example of Russian adherence to the principle of succession. Article 3 stated that: "Russia and Ukraine abandon all claims to the territories situated to the West of the frontier laid down by Article 2 of the present Treaty. Poland on the other hand abandons . . . all rights and claims to the territory situated to the east of this frontier . . ."

Another type of international agreement which the new regime refused to recognize comprised agreements between Imperial Russia and other governments of Europe that were aimed at the suppression of revolutionary movements. The convention between Russia, Prussia, and Austria-Hungary on mutual assistance between these three governments in the suppression of the Polish independence movement of October, 1833, or the protocol of March 14, 1904, on the suppression of anarchistic movements, are typical examples.

In the course of time, however, the Soviet government on a number of occasions clarified its position regarding the continued adherence to international treaties entered into under the preceding regime by the proper replacement of superannuated conventions and agreements with new treaties. The exchange of notes between the British and the Soviet governments confirming the *de jure* recognition of the Soviet government stipulated for

the continuation of existing treaties and anticipated new agreements to replace those treaties which had lapsed or had been repudiated. By governmental proclamation, by references in new laws or official accessions, or even indirectly by way of publishing the texts of treaties in force between the Soviet state and the rest of the world, a number of international agreements entered into by the prerevolutionary government were recognized as remaining in force.¹⁰⁷

At the same time the Soviet Union considered itself bound by the treaties and conventions which established international cooperation for the protection of fisheries, the protection of fur-bearing seals, the humanization of methods of conduct of war, and technical cooperation in various fields of international concern, such as the postal convention, convention on radio-telegraphy, telegraph cables, collision of ships on the high seas, prevention of such collisions, settlement of claims arising from maritime collisions and assistance and salvage of life in maritime accidents.

In 1924 the Soviet government saw fit to make a declaration to the *Institute Intermediaire International* (April 2, 1924) in which it denied that it ever contemplated the repeal of all international agreements entered into by the former Russian regimes. It claimed that the need to replace some of these treaties by new agreements, or denouncing them in specific cases, was due to the external circumstances which accompanied the October Revolution. For more than seven years the new government was in isolation and maintained no legal relations with the rest of the world. It was thus natural that in many instances treaties and agreements went out of date and could therefore no longer apply.¹⁰⁸ On many occasions the revolutionary government claimed rights of Imperial Russia, invoking the doctrine of succession to the rights of the Russian empire. For instance, Article I of the Protocol between RSFSR and Mongolia (May 31, 1922) stated that "... housing and property on the territory of the Outer Mongolia which were the property of the former Russian Empire which were controlled by its former consuls, by the right of succession are considered property of the RSFSR."¹⁰⁹

On many occasions the government of the RSFSR and later of the USSR protested against holding congresses or conferences or making collective decisions without Russian participation regarding matters which were already subject to similar decisions or deliberations in the past. The Aaland Islands, Spitzbergen, status of the Chinese-Eastern Railway which was debated at the Washington Conference in 1921, regime of the Niemen River, regime of Turkish Straits, or situation in the Middle East following World War I, were various matters in which the Soviet Union considered itself a successor state and claimed rights which were acquired by the Tsarist regime.¹¹⁰

In the final analysis an explanation for the changes in Soviet policies regarding its position as successor to imperial Russia is to be found not so much in the doctrinal positions of Marxism-Leninism, but rather in the interests of the Soviet state. The Soviet Union (in the Decree on Peace)

denounced secret diplomacy, acquisition of territories by partitions arranged with other great powers, special privileges of Russian citizens in other countries, and in addition rejected agreements which were designed to stifle liberation movements. This contrasts sharply with the period of Soviet cooperation with Nazi Germany. In a series of secret agreements the Soviet Union arranged for the partition of all Eastern Europe and stipulated moreover for cooperation with Nazi Germany in the suppression of all forms of Polish political agitation for the liberation of their country. The policy of secret agreements and of concessions as the price of military cooperation was followed in the succeeding period by agreements between the Big Three powers (Soviet Union, Britain and the United States) and most notably in the three key conferences at Teheran, Yalta, and Potsdam.

D. Foreign Debts of the Imperial Regime

The decree of the Soviet government of January 28, 1918, proclaimed the annulment of all loans and debts contracted or guaranteed by the "governments of the Russian landowners and Russian bourgeoisie." The Russian delegation explained this measure at the Economic Conference of Genoa in the following terms:

"The revolution of 1917, which totally destroyed all old economic, social and political relations and replaced the old society with the new, and which transferred the government power in Russia, on the basis of the sovereignty of the revolted people, into the hands of the new social class, has interrupted the continuity of civil obligations which were an integral part of the old society, and which were extinguished with the social order of which they were a part . . . This revolution was a grandiose cataclysm, the like of which the world has experienced in exceptional moments of its history, and its character of a superior force cannot be disputed by an impartial statesman."¹¹¹

The Soviets argued that a considerable part of the international debt of Russia was contracted in order to shore up the disintegrating monarchical order in Russia, and that foreign loans were acts of class warfare directed against the new ruling class.

However, as economic conditions in Russia deteriorated it became essential to modify the position of the total repudiation of tsarists debts. The Ninth Congress of the Soviets issued a statement of policy (January, 1922) which offered a possibility of settlement on the condition of further assistance. It upheld the earlier position that the working masses were not legally responsible for the debts of the overthrown government. Nevertheless, in order to obtain assistance from the capitalist countries it offered to repay these debts, subject to the condition that concessions as to terms of these debts are offered.¹¹² These concessions included a reduction of the total sum and assistance to the economy of Soviet Russia.

However, not all debts were to be honored, and a distinction was made

between the pre-war (1914) and wartime loans. Pre-war loans were designed to develop Russia economically, and therefore could be recognized as repayable by the Bolshevik regime. War time (1914-1917) loans were designed to assist the Allied war effort, and therefore were not in the exclusive interest of Russia. During the war, Russia suffered a heavy loss of territory, of population and a destruction of economic assets in the common cause. These losses exceeded comparable losses of other powers and it was, therefore, only right for the Russian government to offset these expenses and losses, particularly as it had gained nothing from the war.

As regards other debts, Chicherin, the Soviet foreign Commissar, stated on October 28, 1921:

“Russian government declared itself ready to acknowledge its obligations towards other States and their citizens resulting from the Government loans incurred by the tsarist government until 1914, under the express reservation that this will be made under special conditions, facilitating the discharge of this obligation.”¹¹³

The partial promise of repayment made by Chicherin and the Ninth Congress was paralleled by a much harder line, which also recognized the duty of the Soviet government to repay the debts of the pre-revolutionary regime. This was advanced as the basis for the negotiations during the Genoa and the Hague Economic Conference of 1922. The Russian government claimed that debts of the imperial regime were set off by Russian counterclaims, which far surpassed the pre-1914 obligations, as well as those incurred during the war. These counterclaims consisted of two classes:

1. The value of Russian property and assets situated abroad, including those which at one time or other belonged to the imperial and interim governments;

2. The claims for damages resulting from the Allied intervention in Russia which resulted in destroyed factories, communications, coal and other raw materials, foodstuffs, naval and merchant shipping, and military equipment. Also, included should be claims of Russian citizens for damages due to Allied military action.

During the Hague economic conference which was convened to discuss specially economic problems of Russia, the Soviet delegation suggested the following final proposals:

1. The Soviet government is ready to abandon its counterclaims resulting from the Allied intervention in Russia provided that the capitalist states shall make available to Russia credits necessary for the reconstruction of Russian economy and at the same time withdraw their claims for the payment of the tsarist war debts.

2. It is also ready to acknowledge its obligations as regards a part of the pre-war loans, without interest for the time elapsed, provided that payment is arranged in the form of additional interest in connection with the new credits.

3. It is also ready to satisfy the claims of foreign citizens-former owners

of confiscated and nationalized property, by means of concessions for the exploitation of their former property.¹¹⁴

Two further efforts were made by the Soviet government to settle the matter of the foreign loans of the imperial government. The unratified treaty of commerce with Britain (August, 1924) provided for the payment of the pre-war debts, and in 1927 the Soviet government proposed to France a recognition of its obligations only as regards sums due to small holders of the obligations of the former tsarist government. It proposed that these debts be repaid in 62 years.

The final act in the determination of Soviet attitude to the debts incurred by the imperial regime came during the negotiations of diplomatic recognition for the Soviet Union by the United States. Settlement of American claims by the government of Russia was one of the preconditions of recognition. The settlement of these claims was dealt with in two documents. One was the so-called Litvinov assignment (November 16, 1933) by which the Soviet government transferred to the American government all claims it had to property in the United States of the nationalized corporations and enterprises in Russia.¹¹⁵ The other document was the Gentlemen's Agreement between the USSR and the United States which provided for payment of not less than \$75 million but not more than \$175 million on account of the debt of the Provisional Government in the form of a percentage above the ordinary rate of interest on a loan to be granted by the United States. This agreement was in the settlement of all mutual claims of the two governments and of their nationals.¹¹⁶

The Soviet-U.S. settlement of 1933 was in fact a recognition of Soviet responsibility for all types of debts incurred under the pre-revolutionary regimes. It included loans financed on the private market in the pre-1914 period, as well as financial assistance granted to the Provisional government (March, 1917) during the war. The only concessions to Soviet demands were the recognition of the effect of Soviet nationalization measures in the United States territory, and the acceptance of Soviet proposals as to the payment of Soviet debts to the United States and American citizens. In this last respect the real purpose of Soviet policy, i.e. that payment shall be effected as a condition of granting financial assistance to the present Soviet government, was achieved.

E. Continuity and Succession in Soviet Literature

There was considerable awareness among Soviet writers that the position of the Soviet Union in international affairs was at least partly due to the fact that Soviet order had replaced the imperial regime; and, as a consequence, it stood in a direct relationship to the territorial and ethnic reality which pre-revolutionary Russia represented. The elements of that reality represented a

continuity between two historical formations representing the same territory and the same people.

Professor Bobrov for instance admitted that the Bolshevik government which emerged from the Revolution stood at the head of "... a people which even before [the revolution] was unified in the form of a state—and provided a base for that state as a subject of international law."¹¹⁷

Ambivalence of Soviet foreign policy and international law interpretations between continuity and succession and discontinuity and breach theories is tied to basic concepts in the Soviet theory of constitutionalism.

Soviet constitutional theory distinguishes between the form and the type of a state. The form of state and government is a concept known to general constitutional theory. Soviet theoreticians have introduced a new criterion for the systematization of various political forms of states and have coined a new term for it. The "type" of a state is determined not so much by its institutions as by the economic forms of its society and the domination of a determined social class. Thus four types of states may be distinguished: those based on slavery, on serfdom, on hired labor, and on socialization of means of production, corresponding to slave, feudal, bourgeois and socialist states. Changes in form of government or other reforms which do not result in the emergence of a new ruling class are without significance. Slavery, serfdom and capitalism have existed under various forms of government ranging from the Athenian republic to modern monarchies. Both slavery and capitalism found expression in the democratic and monarchical form of government. In both cases the form of government is not related to the forms of economic activity.

The same applies to the socialist type of state, which has its first model in the Soviet Union and in the constitutional principles of the Soviet Constitution of 1936. The main criterion is the question of the control of power pushed, in the case of a socialist type of state, to such an extreme that even a total absence of socialist forms of economy would not affect the class character of the state. The sole criterion of the class character of a socialist state is control of the state by the working class and its vanguard, the Communist Party. Even socialist forms of production are not enough. Socialist forms of production ... from the point of view of Leninism ... are a weapon, and a weapon only. Under certain conditions this weapon may be turned against the revolution. ... It can serve the working class and the peasantry ... It all depends upon who wields this weapon and against whom it is directed.¹¹⁸

The distinction between form and type permits Soviet jurists to claim continuity when it is in the interest of the Soviet state, or discontinuity when a particular situation might require it. Reference to the change in socio-economic relations will generally support the claim for discontinuity, indicating also new attitudes to problems of international policy. Typical in this respect is the often quoted statement of Lenin: "... our international policy has nothing in common either with that of the tsar, or with the

policy of Russian capitalists or Russian bourgeoisie, even the democratic one . . . ”¹¹⁹

In more recent times the question of the state and the organization of government has been seen in a somewhat different perspective. The state is regarded as something more than a formal organization of the ruling class. As a young Soviet jurist stated:

“ . . . the state represents not only a political organization of the ruling class but is also a historically conditioned form of national existence, and consequently the Soviet state, as a new type of the organization of the multinational unity of the country was established on the basis of the old Russia, on the basis of the old subject of international law—the former Russian empire. It was established on the territory of Russia, and it consists of all nations of the former tsarist Russia . . . the same nations, which in October, 1917 assumed responsibility for their own destiny.”¹²⁰

This line of reasoning is not without its legal consequences. One of the early representatives of this viewpoint, Professor Kozhevnikov (F.I.) held that as a subject of international law, the Soviet Union represented the continuation of the Russian empire. Revolution had no effect upon the status of Russia in the international community and the Soviet state was the same subject of international law.¹²¹

In contrast Professor Krylov was convinced that the emergence of the state of the new type indicated that a new subject of international law had been created.¹²² Professor Korovin took an intermediate position. During the first period prior to the establishment of the Union (December, 1922) RSFSR was the continuation of the former Russian empire. Since the Soviet Union was established a new subject of international law had been created.¹²³

The key issue in this controversy was the impact of the intervening changes on the political identity of Old Russia with the Soviet Union and on the problem of succession vis-a-vis the former Russian empire. In this connection Soviet scholars had been limited in their reasoning by the fact that in its initial years, the Soviet Union claimed that it was a new political and social phenomenon, which was not a continuation of the old Russia, with the result that in international relations it was free to choose its rights and obligations as they corresponded to the new political reality which it represented. Professor Kozhevnikov, convinced of the fundamental identity between pre-revolutionary and post-revolutionary Russia, claimed full succession of the Soviet Union to the rights of the imperial regime and a limited succession to its obligations. Kozhevnikov's critics pointed out that the question of succession would arise only if there were two different subjects of international law, one replacing the other. The Soviet Union had not inherited all rights of the Russian empire. In various situations the Soviet government had in fact renounced the rights of the Imperial government as regards certain parts of the Russian territory, certain financial claims, and even the right to exercise jurisdiction in the territory of the weaker states of the Orient.¹²⁴

The theoretical controversy among Soviet scholars as to the nature of the Soviet Union's membership in the international community is far from resolved. There is unanimity on one point only: that the Revolution of October, 1917 gave the new regime a free hand to determine which of its obligations and which of the rights were compatible with the new social and economic reality created by the Revolution.

From the perspective of the present day, however, acts of the revolutionary government seem less radical as regards the transformation of the foundations of international order than they were proclaimed to be at the moment of the Revolution. Renunciation of secret treaties because of their stipulations as regards the future division of the spoils, the declaration of the principle of self-determination, the renunciation of the policy goals of tsarist Russia in relation to the acquisition of certain territories, or the non-interference into the affairs of the weaker nations seems to be less momentous now than at the time of the respective declarations. In present day perspective, with territorial ambitions of imperial Russia almost totally realized, since the Soviet Union has avenged her defeat by Japan in the war of 1905 and regained her territories lost by the treaty of Portsmouth, the Soviet Union seems to be more of a direct heir of the imperial foreign policy than the heir of a revolutionary state. It also seems that declarations of the revolutionary government in the initial period were tactical rather than a new international law and were dictated by the inability of the Russian government to extend its control over Poland, the Baltic provinces, and the Ukraine, which were at that time occupied by the German and Austrian armies.

It was also true that the ethos of Soviet dominance in Asia and Europe differed from that of Imperial Russia which had suffered from a moral and political decadence. Furthermore, Soviet control over the system of socialist states in Europe and Asia relied on different techniques and employment of new methods.

In spite of these differences, the political effect of the presence of the great power aspiring at controlling the conditions of its security, at advancing its economic, social and cultural interests is much the same as the corresponding influence of Imperial Russia. The Russian state, whether under the tsars or under the Soviet government, is indeed the "historically conditioned form of national existence"; and from that point of view, Professor Kozhevnikov's opinion that the Soviet Union is the same subject of international law as the tsarist Russia, seems to be closer to the true interpretation of international law in force than those supporting the doctrine of discontinuity. Professor Kozhevnikov, who had a better understanding of the real import of the situation created by the October Revolution, interpreted the act of repudiation of foreign debts as an act of retaliation: "The Soviet government was forced to answer illegal actions of the capitalist governments by retaliatory measures, which is permissible from the point of view of international law."¹²⁵

Indeed, rejecting the dialectical method, all acts of the revolutionary

government during the initial years of the Revolution and determining the new stand of the Russian governments in the situation created by the war were directly related to the war policy of the Imperial regime, which proved unrealistic and demanded change. The general tenor of the revolutionary policy was a breaking away from entanglements which brought Russia to defeat and humiliation. Ideology explained the necessity to abandon the policy of a great power.

Renunciation of this policy was only a temporary measure. It was again resumed in new conditions, characterized by the existence of the United Nations Organization, the presence of nuclear arsenals, and an even greater urgency to control forces that have twice in the course of the first half of the twentieth century brought the world to the verge of destruction.

IX. THE SOCIALIST COMMONWEALTH OF NATIONS

People's democracies in Europe and Asia began their evolution towards socialism as Soviet dependencies. The first people's democracy, the Mongolian People's Democratic Republic, was the result of the continuation of the Russian Imperial policies of penetration and conquest in Outer Mongolia. People's democracies in Europe were the result of the Soviet Union's emergence as the supreme power in Eastern Europe following the German defeat during World War II, which gave it control over a vast area including Albania, Bulgaria, Czechoslovakia, Hungary, Poland, Rumania and Yugoslavia.

Once the transition to the socialist order was made, however, it was necessary to give a new ideological and political meaning to the regimes that were set up in the new socialist nations, the redefine their position with regard to the Soviet Union and the world at large. This important task was the object of the Conference of Nine Communist and Workers parties which assembled in September, 1947, in Poland.

People's Democracy is defined in *Bolshaia Sovetskaia Entsiklopedia* as "the form of political organization of a society . . . which, depending on concrete historical conditions, consists in the dictatorship of the proletariat or the dictatorship of the proletariat and the peasantry."¹²⁶

The term people's democracy (*narodnaia demokratiia*) was originally used in the Soviet Union to describe regimes established in certain areas of Russia occupied by the Red Army in which Soviet control had to rely, owing to an almost total absence of an urban proletariat, upon the peasantry: Soviet Outer Mongolia, which was not theoretically a part of the Soviet Union, represented another example of a people's democracy.

People's democracies in Eastern Europe are, according to the Soviet encyclopedia, a result of specific historical conditions. It was due to the assistance of the Soviet Union that they emerged from the upheaval caused by Hitlerite aggression. The Soviet Army liberated these countries from

German occupation and by its mere presence restricted the activities of the reactionary circles, prevented the eruption of local civil wars for power, and accelerated the progress of revolutionary processes.

The Soviet encyclopedia describes the nature of the regimes established in these countries as "representing one of the forms of the dictatorship of the proletariat and the peasantry, as it was born in the anti-Fascist struggle and is directed against imperialism and fascism."

The indispensable condition for the continued progress of people's democracies towards socialism is the close cooperation of the regimes established in those countries with the Soviet Union, with the result that the Soviet Union and the countries of people's democracy have established in their economic cooperation an international socialist market, a socialist system of international relations, and a common political camp, opposed to the camp of capitalism.

The emergence of the communist regime in China and, under its wing, the Far Eastern branch of the socialist commonwealth of nations, including North Korea and North Vietnam, introduced new elements into the political and economic realities of the commonwealth. It became a bifocal arrangement with China, representing another center of imperial ambitions, affecting the Soviet position with regard to the other socialist nations. It was reflected in Soviet concessions to China regarding Russian rights on Chinese territory, and a short lived Sino-Soviet condominium in Outer Mongolia, which ended in 1962 when Mongolia became a member of the Council for Mutual Economic Aid. Within this enlarged framework covering the enormous expanses of the Eurasian continent the early arrangements of Stalin's empire were again transformed. The Commonwealth ties emphasized more and more forcibly techniques of alliance rather than subordination, of ideological affinity and community of policy rather than the principle of leadership.

Foundations of the Commonwealth of Socialist Nations were laid down in a system of bilateral treaties between the Soviet Union and other socialist countries, frequently also repeated between the non-Soviet members of the Commonwealth, which had established the conditions and forms of the economic, cultural, political and defense cooperation. At the same time there were outward manifestations of the common channels for the coordination of the policies followed by member states. The most important of these was cooperation on the level of the leadership of the Communist Parties of the Commonwealth countries, aided since 1948 by an Information Bureau which was allegedly a data gathering and information transmitting organization. In time other international organizations, more specialized in character were developed.

At the center of Commonwealth relations are those relations between the smaller members of the community and the Soviet Union, a country so disproportionately larger than the rest of the Commonwealth (with the exception of China) that its presence and participation in the Commonwealth

life tends to dominate and color it accordingly. Indeed, because of this fact of political influence, it was difficult to distinguish those actions which were Commonwealth actions from those of the Soviet Union. In consequence, disagreement with the policy of the Commonwealth was a disagreement with the policy of the Soviet Union.

A. Formation of the Commonwealth

Soviet ideas as to the legal nature of ties linking the new socialist states with the Soviet Union have gone through two phases separated by the death of Stalin. Initially, Soviet leaders thought of the expansion of the social and economic revolution only in terms of power. There was little awareness of the fact that the second Socialist Commonwealth of Nations was the result of different circumstances, and represented different political and social realities compared with the system of the socialist states which emerged from the October Revolution.

This frame of mind inspired the resolutions of the conference of the Communist and Workers' Parties held in September, 1947, in Poland which declared that the world was split into two camps, led by the Soviet Union and the United States. The camp led by the Soviet Union would eventually achieve a higher level of social and political organization by developing closer ties with the Soviet Union.¹²⁷

In his address to the voters of the electoral district which he represented in the Supreme Soviet (February 9, 1946), Stalin suggested that the Soviet state possessed the ability to provide a broad framework for the unification of peoples and nations. His ideas were developed by the late Eugene Korovin in an article dealing with the principles of the Soviet Constitution of 1936. The October Revolution, Professor Korovin asserted, repeating the words of Stalin, created a form of government which offered a model for the future community of nations.¹²⁸

This rather broad hint as to what the new socialist nations ought to expect from history led to a number of studies dealing with the problems of political and economic integration. The Soviet Union, Soviet scholars declared, had devised various forms of associations, providing for gradations in self-government status for national groups belonging to the Soviet Union. Each form of statehood corresponded to the size of the national group and to its cultural development. At the same time, Soviet scholars explained, forms of national organization and degree of national autonomy had no bearing upon the national sovereignty and real freedom of each social group. Although Soviet laws made distinctions among degrees and forms of national organization mostly in geographical terms—such as area, region, autonomous republic, and finally the union republic—self-government of the people, and real sovereignty of the state over its affairs are always identical.¹²⁹

However, this plan for the gradual incorporation of the people's demo-

cracies in the Soviet Union never assumed important proportions.

After the death of Stalin, relations between the Soviet Union and the new members of the Socialist Commonwealth assumed forms indicating that the new socialist nations were destined to retain formally at least the prerogatives and the position of independent members of the international community. Commonwealth relations were shaped not only by the fact that socialist nations have adopted new forms of social and economic organization, but by the fact that they had remained sovereign states with membership in the world community.

This turn of events brought about a tendency to expand the body of law governing the relations between socialist nations. Multilateral organizations already in existence such as the Council for Mutual Economic Aid (CMEA), the Danube Commission and the Organization for the International Cooperation of Railway Administrations, were revived and expanded; and the Warsaw Treaty Organization and the Joint Institute for Atomic Research were established. At the same time, treaty law dealing with technical and scientific assistance, trade and navigation, cultural cooperation, legal aid, dual nationality and consular relations were developed. The presence of Soviet military forces in the territories of the member countries of the Warsaw Treaty Organization was given a legal basis. According to all signs, the federal organization of the Commonwealth on the pattern of the Soviet Union was replaced by a new concept, that of a gradual evolution of the entire community of socialist states including the Soviet Union into new relationships, not by means of constitutional reforms, but by the growth of closer ties representing a change in international law concepts.

The new trend found its expression in the October, 1956, Declaration of Soviet Party and Government issued in connection with the unrest in Hungary which dealt directly with relations between the Soviet Union and the other members of the Socialist Commonwealth in terms of relations between independent sovereign states: "A policy of peaceful co-existence, friendship and cooperation among all states has been and continues to be the firm foundation of the foreign relations of the Union of Soviet Socialist Republics. This policy finds its deepest and most consistent expression in the mutual relations among the socialist countries. United by the common idea of building a socialist system and by the principles of proletarian internationalism, the countries of the great Commonwealth of Socialist Nations can build their mutual relations only on the principles of complete equality, of respect for territorial sovereignty, and non-interference in one another's internal affairs. Not only does this not exclude close fraternal cooperation and mutual aid among the countries of the Socialist Commonwealth in the economic, political and cultural spheres; on the contrary, it presupposes these things."¹³⁰

The October Declaration gave an added impetus to the trend of providing a legal framework for various aspects of socialist interstate relations. Outstanding territorial questions were settled, status of forces agreements were

concluded, conventions on frontier regimes were arrived at, and important concessions in the Danubian questions were made to Yugoslavia and other riparian states. While the chancelleries of foreign affairs of the socialist countries were seeking to provide for all contingencies in relations among the members of the Commonwealth, party leaders were seeking a new formula to replace the concept of Soviet leadership as the chief organizing force in the cooperation of the socialist nations. The outcome was a balance between the idea of rights and of national sovereignty counterpoised by the idea of economic determinism which made for closer integration, and made the final liquidation of the national states an historical necessity. Expanded economic cooperation will lead finally to a world economic system and a world community without states or dividing boundaries. Instead of the mechanistic concept of unification of nations at different economic and cultural levels within the framework of an expanded Soviet Union, it posited the harmonious coalescence of independent and equal nations. As Khrushchev explained in one of his speeches: "With the victory of communism on a universal scale, state frontiers . . . will wither away. What will be left will be mere ethnographic frontiers, and these only in a conditional sense. There will be no frontier guards, no customs, and no border incidents.

"An excellent accelerator of this process is the equalization of the economic and cultural development of the socialist countries, the pulling of those lagging behind. This will lead to the merging of peoples into one communist family . . . Not a single country will be able to lock itself within its own frontiers."¹³¹

Thus the life of the Socialist Commonwealth was seen as extended to the period when communism would be a reality on a worldwide scale. Its emergence was held to represent an event equal to the October Revolution, which produced the Soviet state. Following the summer 1962 conference of the party leaders in Moscow, Khrushchev summarized their debates as follows: "The victory of socialism in the Soviet Union led to the genuine social-economic unity of the whole society . . . Now, with the emergence of socialism beyond the bounds of a single country, there is taking place a process, unprecedented in human history, of unification of the working people for the struggle to build a new society within the framework of an entire world system. Strictly speaking, this process began only in the past fifteen years, when the principle of the new relations among nations was established and the forms of comprehensive cooperation among the countries took shape. Classes still remain in the countries of socialism, but they are friendly classes, and national peculiarities will remain for a long time; moreover, the most favorable conditions are being created for the flowering of nations. Consequently, national and, to a certain extent, class interests and distinction still remain. But at the same time, the chief and decisive things that unite and make kindred all people who have taken the path of building a new life, regardless of their class and nations, are acquiring an ever greater importance."¹³²

While the joining of the socialist nations in some form of broad union is a matter of future development, and of close economic ties, which would do away with the paraphernalia of statehood and of national identity, Khrushchev felt that the present state of affairs was already a long step forward in the proper direction. Summarizing the results of the great Concilium of the Communist Parties of the World which assembled at the end of 1960 in Moscow, he stated: "The prototype of the new society for all mankind is being created on the part of the globe occupied by the world socialist system. This places special responsibility on the communist parties of all the socialist countries. With proper political and economic guidance, which takes into account both the general laws governing socialist construction and the specific features of the respective countries and the peculiarities and requirements of each stage of development, we shall be able to employ the advantages of socialism more actively and achieve new successes."

Furthermore, Khrushchev found that the new situation in mutual relations of the socialist countries and the communist parties was incompatible with the idea of leadership of the Communist Party of the Soviet Union: "In reality the Communist Party of the Soviet Union does not lead the other parties. There are no 'superior' and no 'subordinate' parties in the communist movement. All the communist parties are equal and independent, and all bear responsibility for the destiny of the communist movement, for its victories and failures. Each Communist and Workers' Party is responsible to the working class, to the working people of its country and the entire international workers' and communist movement."¹³³ Some of the implications of the legal regime established in Eastern Europe after the death of Stalin are visible from the armed intervention of the Soviet and Warsaw Pact forces in Czechoslovakia in the summer of 1968. The Soviet government's position is that the invasion and occupation of Czechoslovakia is based upon the terms of treaties of alliance providing for the regional collective security system in Eastern Europe.

B. The Sovereignty of the Socialist Countries Legal Terminology

The general tenor of the long line of political declarations from the Soviet leadership and of the treaties which provide the legal foundations of the Commonwealth, following the events in the fall of 1956, has been that the membership in the Socialist Commonwealth of Nations does not detract from the national sovereignty of the socialist countries. They remain full-fledged members of the international community, while their social and economic order and the political internal system, which features the concentration of power in the hands of the national communist parties, results in a common policy.

It is traditional to look upon the concept of sovereignty as a bar to the effective rule of international law in the world community. The power

balance within the Commonwealth of Socialist Nations and its internal evolution permits us to see the problem of sovereign status in a different light, as leading to the determination of mutual rights and obligations with reference to general legal principles, assuming some degree the rule of law within its framework.

In the present international context, the concept of sovereignty is the expression of the idea of equality of the members of the family of nations irrespective of their actual influence and power. Like all abstract concepts, it is tempered by actual conditions and power relations.

Within the socialist relations the idea of equality is first expressed by the provisions of treaties governing various aspects of their mutual relations. Legal aid treaties, cultural, technical and scientific cooperation agreements and consular conventions all belong to that category of international agreements—couched in general terms and identical for all parties—which establish rules for various areas of international cooperation.

Of special political significance following the 1956 crisis were the dual nationality treaties between the Soviet Union and other socialist countries. During the Stalinist period, the Soviet government followed the practice of posting Soviet experts in the party and governmental structures of the Eastern European people's democracies as well as widely using Soviet experts in various branches of their armed services and security agencies. To this end Soviet-type nationality legislation, which was generally adopted in Eastern Europe and which permitted the granting of citizenship to foreign nationals without any formality whatsoever, was of great significance.

After 1956, the policy of placing Soviet nationals in high governmental posts of Eastern European countries was reversed, and there was a vast exodus of Soviet experts and army and security officers. The majority of them returned to Russia, while some have stayed and continued in the employ of the socialist states in Eastern Europe. In order to clear the matter of the nationality of those who returned and those who were retained and to settle the question of their basic loyalties, a number of dual nationality conventions were also concluded. The Soviet Union had dual nationality conventions with the following countries: Yugoslavia (May 22, 1956),¹³⁴ Albania (September 18, 1957),¹³⁵ Bulgaria (December 12, 1957),¹³⁶ Hungary (August 24, 1957),¹³⁷ Korean People's Republic (December 16, 1957),¹³⁸ Mongolia (August 25, 1958),¹³⁹ Poland (January 21, 1958),¹⁴⁰ Rumania (September 4, 1957),¹⁴¹ and Czechoslovakia (October 5, 1957).¹⁴² On July 24, 1963, the Soviet Union concluded another convention on dual nationality questions with Hungary, supplementing the provisions of the earlier convention of 1957.¹⁴³

Of great importance for the mutual relations between the socialist countries are the 1958 Conditions of Delivery, which provided uniform standards for trade transactions between the socialist countries, and a uniform system of criteria determining the competent law and jurisdiction of the arbitration courts for the solution of disputes. Finally, the key principle of the operation

of various international organizations binding the members of the Socialist Commonwealth of Nations is the unanimity rule and voluntary participation in its projects and plans of cooperation. The Council for Mutual Economic Aid, established in 1949, is basically conceived of as a platform for government consultation. Organizations of the Council decide procedural and technical questions. In all matters of substance, organizations of CMEA, including the Council itself, issue recommendations and only formal acceptance by the interested states commits them to a definite course of policy. As a team of Soviet experts described the work of CMEA in 1960: "An important function of CMEA is the organization of the cooperation of the countries, parties of the Council, in the field of coordination of their economic plans. This does not mean that CMEA is a kind of common planning body of the CMEA countries. Each CMEA country works out its plans for the development of its national economy. At the same time, however, CMEA countries distribute through its bodies information on the needs and capabilities of the entire area, in order to include them in the national plans."¹⁴⁴

The principle of unanimous decisions combined with the principle of acceptance is characteristic for all international organizations of the Socialist Commonwealth of Nations, including the Railway Organization, the Danubian Commission, and the Postal and Customs Organizations. The theoretical Manifesto adopted by the June, 1962 Conference of Communist Parties on the Principles of the International Division of Labor stated in unequivocal terms: "The world socialist system is a social, economic, and political commonwealth of free sovereign peoples following the path of socialism and communism, united by a community of interests and goals and the indestructible ties of international socialist solidarity.

"Each socialist state works out its own national plan for economic tasks posed by the Communist and Workers' Parties, and taking into account the needs and potentialities of all the socialist countries."¹⁴⁵

C. Sovereignty and Inter-Party Conferences

Suppression of the Hungarian Revolution created a situation calling for the redefinition of the nature and the function of the Socialist Commonwealth. After the Russian Army quelled a determined effort by a socialist country to leave the Commonwealth, it became clear that if the Commonwealth was to survive the Soviet act of force could not be interpreted as one of many Soviet acts of force to incorporate a territory of a nation into the vast structure of the Soviet Empire. A new formula was needed, combining the idea of unity with the concept of divergence. The idea of divergence was described in the principle of sovereign equality, the idea of unity in the principle of socialist internationalism.

The first attempt at providing this formula was made in the declaration

of October 30, 1956, quoted above. It proposed to shape the relations between the socialist countries with reference to two ideas: peaceful co-existence, which is the principle of interstate relations, and proletarian internationalism, which is the concept borrowed from the code governing relations between the communist parties. The declaration offered a practical application of the new formula in relation to the question of the presence of Soviet troops in Hungary, which at that moment was the crucial issue in Soviet control in Eastern Europe. The Declaration stated that: "the stationing of troops of one state . . . on the territory of another . . . should take place on the basis of an agreement among all Pact participants in addition to the agreement of the state on whose territory those troops are stationed or planned to be stationed at its request."¹⁴⁶

In due course came the change in terminology. The Moscow Conference of Twelve Communist Parties (1957) still used the term "proletarian internationalism" to describe the nature of the ties binding socialist countries. In 1960, the declaration of the Conference of World Communist Parties held in November, 1960, officially introduced the new term "socialist internationalism."¹⁴⁷

Thus, in the final analysis, the Socialist Commonwealth is characterized by an intrinsic dualism consisting of the fusion of rights indispensable to the existence of modern nations in the contemporary world community (independence, sovereignty, non-intervention into internal affairs) with the political duty to strive for common aims vaguely defined by reference to proletarian or socialist internationalism.

After the Hungarian revolt, a pattern for cooperation was established combining formal independence for the member states—removing direct Soviet control from vital areas of national life—with closer understanding among the leaders of the national Communist parties on the basis of Marxist-Leninist ideology. This formula was worked out at the November, 1957, meeting of the leaders of the twelve parties in Moscow, and it initiated a new era in Commonwealth relations. Cooperation at the party level, where Commonwealth affairs would be discussed not from the position of governmental interests, but in terms of the political programs of communism, became an established form of cooperation. In the first period following the Polish and Hungarian revolts, discussions on the interparty level stabilized the Commonwealth itself, to become eventually a source of directives important for the political and economic cooperation of the socialist countries.

At the same time, it was clear that cooperation between the party leaders was an important source of decision-making to determine the governmental policies of the socialist countries. Writing in 1959, Professor Tunkin was of the opinion that the key to understanding the present situation in relations among the socialist countries was the principle of proletarian internationalism. The victory of the socialist revolution in Russia and the creation of the first proletarian state gave a new dimension to proletarian internationalism.

Workers' and Communist parties of the world were duty bound to defend and strengthen the first socialist state. The emergence of the system of socialist states following World War II transformed proletarian internationalism into a principle governing the relations among the socialist states: "From the principle of proletarian internationalism flow for the socialist states concrete rights and obligations, which at the same time have the character of moral and legal rights and obligations."¹⁴⁷

While Tunkin spoke generally of new international relations inspired by proletarian internationalism, according to Korovin, agreements reached at interparty conferences constituted an important source of rules to govern relations between the socialist countries: "The Socialist countries are states which are ruled and directed by the Communist and Workers' Parties. It naturally, and necessarily follows, therefore, that the inspirers and organizers of the new stage in the progressive movement of mankind, and particularly in international law, are the communist parties."¹⁴⁸

Since the 1956 crisis, the practice of calling party leaders conferences to examine basic issues of policy for the Commonwealth countries was well-established. There are three distinct types of such conferences of party leaders depending upon the subject matter of their debates.

One of the most important types of such conferences are those called to discuss key problems of economic cooperation between the member countries. The first of those was the conference which convened in May 20-23, 1958, in Moscow. It decided to embark on a vast program of economic reorganization on the CEMA countries through a gradual implementation of the plan for the "International socialist division of labor and rational specialization and coordination of production," which ended with their recommendation to work out a long term plan for the regional development of basic branches of industry. The Conference also recommended changes in the organization and working methods of CEMA. At that conference, moreover, the Rumanian Party leadership came out against the proposed assignment of specialization lines, which would de-emphasize the progress of industrialization in that country.¹⁴⁹

In 1960 (February 2-3), the conference of the Party leaders from the CMEA countries took up the matter of agriculture.

The third conference of Party leaders from the CMEA countries assembled in Moscow on June 6-7, 1962. It adopted an elaborate statement of common economic policy for their countries, which at that time included Outer Mongolia but excluded Albania. It recommended changes in the organization of the Council for Mutual Economic Aid, proposed the creation of the international investment bank, and established priorities in the general program of investment. Question of international policy were discussed at the conference of the First Secretaries of the communist parties of the Warsaw Treaty Organization which was held in Warsaw on August 3-6, 1961. Furthermore, the Conference adopted a resolution dealing with the question

of the German peace treaty and in particular with the problem of the internationalization of Berlin.

Great issues of theory and tactics of the international revolutionary movement are debated by the major councils of the communist parties. In November, 1957, a conference of the twelve parties of the socialist Commonwealth and in November, 1960, a conference of the communist parties of the world (eighty-one parties) gathered in Moscow to discuss fundamental issues of international policy and of the communist movement.

For quite some time since the 1956 upheaval in Eastern Europe, and the emergence of Communist China as the rival center in the bid for leadership in the world communist movement the tendency was towards a relaxation of controls and increase in respect for national interest of the socialist countries. Even at the conferences of the party leaders, national interests occupy an important place in the debates, avowedly concerned with the realization of the historical programs of the international communist movement. As *Izvestia* of May 31, 1964, put it:

"If we want to achieve the genuine, stable unity of all the socialist countries, we must learn to understand and respect one another. Marxist-Leninists have always respected and continue to respect national sovereignty and stand for the full flourishing of the national economies and cultures, for the equal rights of the socialist countries. Communists see the only way to a steady rapprochement of nations, their fraternal cooperation and close alliance, in recognizing unconditionally the right of each nation and each country to independent development and in promoting it in every way."

The technique of managing the affairs of the Socialist Commonwealth of Nations through party conferences was not an unqualified success. It is difficult, if not impossible, to separate the areas of responsibility of interstate as compared with the interparty relations. Party leadership is concerned with relations between the socialist states and formulating a common policy. As a Soviet expert wrote:

"The basic principle underlying international relations of socialist countries . . . is the leadership of the Communist Workers' Parties . . . The leadership of the Communist and Workers' Parties effectively ensures unity in the foreign policy and international practice of the socialist states in developing and perfecting collaboration between socialist states as well as in formulating a common position of the socialist states in resolving the most important international problems which confront all mankind."¹⁵⁰ This leaves little more to be decided on the intergovernmental level than the bare implementation of decisions of the leaders.

The special relationship existing between the ruling communist parties and the governments of the socialist states tends to transform the principle of socialist internationalism into a principle governing international relations, although formal aspects of the law making process is reversed to the interstate level. As Shurshalov wrote:

"... the joint documents approved at the meetings of the representatives

of the communist and workers' parties are of historical significance...; although not sources of international law in the strict legal sense, they do exert a decisive influence on the content of the treaty and other relations of socialist states."¹⁵¹

While conferences of the party leaders lay policy lines for the governments of the socialist countries, they also define policies of the international organizations of the Socialist Commonwealth. The Warsaw Treaty Organization and the Council for Mutual Economic Assistance act as implementing organs for policy decisions made at the meetings of party leaders.¹⁵²

The replacement of Stalin's system of making decisions from Moscow with the technique of elaborate consultation in which the policy making role belongs to the parties and the practical cooperation to the governments concerned has failed to restore the freedom of decision to the leaders of the socialist countries. Conferences of the parties are not diplomatic conferences. The majority principle is the rule of the party conferences and deference to the principle of the leadership of the Communist Party of the Soviet Union is obligatory. Any conflict of national interests with the overall design which assigns the leading role to the Soviet Union both as regards plans for economic development and integration or as regards the collective security of the Commonwealth invariably leads to a crisis and challenge to the principles of Commonwealth organization.

Hence the usual form of defiance is absence from the meetings of the councils of the Commonwealth. The first to apply this method was Yugoslavia in 1948. Poland used that method in 1957, and Albania and China since 1962. The most recent example of such defection was that of Rumania in 1967.

Two types of issues figure mainly in the policy conflicts between the Soviet Union and other members of the Socialist Commonwealth of Nations. Economic development is one of the important problems in intra-Commonwealth relations, although other issues of domestic and international relations of individual members are also in evidence. At the present time both types of policy disagreements tend to appear in combination, a sure sign of the growing sophistication in the internal life of the socialist countries in Eastern Europe and the complexity of the modern international relations.

In the economic field the difficulties stem from the fact that shortage of investment capital makes it impossible to promote industrialization of all the socialist countries at an even rate. Policies of the Commonwealth tend to favor some countries at the expense of others, with the result that they lack support of those who are called upon to divert their resources to assist the others. On two occasions conflicts in the area of the development plan for the Commonwealth have brought about a serious clash and disagreement.

The first of these was the case of Yugoslavia. Soviet-Yugoslav dispute (1948) arose at the time of Stalin's personal rule, in connection with Soviet efforts to control Yugoslav foreign trade with the free economy countries.

The second involved Rumania, a country with important economic assets, which refused to go along with the industrialization plans of other countries at her expense.

In contrast with the Yugoslav and Rumanian disputes with the Soviet Union Hungarian and Polish upheavals (1956) were centered mainly on the de-Stalinization issue, although economic reform and the standard of living of the working masses were also important. One of the important aspects of those disputes was the removal of the Soviet experts from the government, police and armed forces.

At present policy disagreements are far more complicated. Rumanian drive for the economic sovereignty of that country was broadened by the issue of purging of its public life from excesses of the Communist regime and return of the freedom of expression. It is also connected with the problem of easing of East-West tensions, and thus removing the need for the military mechanism of the Warsaw Pact.¹⁵³ Similarly, three issues, the economic reform, liberalization of the regime and diversion of the foreign trade towards the free economy countries were central in the case of Czechoslovakia, which was invaded in August, 1968, by the Soviet and Warsaw Pact forces.

Central in all these policy conflicts was the problem of how much freedom of decision as regards domestic and foreign policy matters is compatible with the membership in the Socialist Commonwealth of Nations and the directing role assigned within that Commonwealth to the Conferences of the Communist Parties. Those who disagreed with the Soviet Union contended that domestic affairs of a socialist country cannot be discussed in the absence of its leadership and that decisions of party conferences may be made only with the agreement of the leadership of the country concerned. As Rumanian Scanteia wrote on March 1, 1967:

"There is a correct way, certain, true to principles and effective for the solution of problems which arouse differing opinions: and this is the way of direct contacts between the parties in conflict and their leaders. The practice shows that discussion among certain parties concerning the activities of an absent party is totally inadmissible in relations between the parties . . .

"Methods and principles which apply in the internal life of a party, for instance centralism, subordination of a minority to the majority, etc., have no place in relations between the Marxist-Leninist parties . . . An effort to impose a certain political tendency or a solution of a problem on another country can be considered as an interference into its internal affairs."¹⁵⁴

The complaints of the Rumanian Party were essentially similar to those of the Yugoslav Party at the moment of their defection from the Cominform.¹⁵⁵

The same demands were voiced by the Czechoslovak *Rude Pravo* in connection with the liberalization of the regime in Czechoslovakia and the impending participation of the Czechoslovak Party in the Budapest Conference of the Communist Parties in April and May 1968. Equality of parties

and non-interference in the internal affairs of the socialist countries is to be the guiding line of the action of the interparty conferences.¹⁵⁶

The Socialist Commonwealth of Nations is supposed to function in two dimensions. As a part of the international community at large it consists of sovereign states which in their relations with other members of the international community, including other socialist states, are independent and equal. Internally, the Commonwealth, although a system of independent states, attempts to demonstrate a singleness of purpose and a common policy forged in the councils of the Communist parties of their countries. These policies are to safeguard the socialist system as a separate political and economic entity.

At the present time, the Commonwealth of Socialist Nations displays tendencies that are centrifugal as regards both the political and economic aspects of the system. Its foreign trade and economic cooperation are increasingly turning away from the Soviet center. Its defense policies are challenged and while Albania, Yugoslavia, and China are permanently absent from the meetings and conferences of the communist parties of the Commonwealth, Rumania and Czechoslovakia are challenging principles upon which the Commonwealth, in its present structure, rests. If a precondition for the continued existence of the Commonwealth is collective defense and economic autarchy, then the system is seriously being undermined. Should it, however, work out a less strict framework for the cooperation of the socialist states, it could continue as a distinct element of the international community, although its claim as the model for the future organization of the world community would be largely demolished.

D. Non-Intervention Within the Commonwealth

Public order in the present day international community assigns regulation of human affairs to norms derived from two sources: international law and domestic law. Both systems of rules depend upon each other. Without power to make internal legal rules the state could not exist; and without a state, the international community of nations could not function. Internal jurisdiction must conform to general standards of legality, as internationally determined. On the other hand a state, as an element of the world organization, is characterized necessarily by an exclusive realm of power. In this sense the principle of non-interference is both a rule of world public order and a determinant of the minimum domestic jurisdiction needed for the continuation of a territorial organization to fulfill its role as a state-member of the international community. So a state may accept obligations concerning currency, finance, custom duties, treatment of foreign citizens or its own nationals, disarmament or neutralization, regime of its ports, etc., and still be a member of the international community. It cannot agree, however, that another state shall represent it in international relations, nor that

another state could legislate for it as regards the form of its government or maintaining its internal order without impairing its status in the international community.

In Soviet international law the non-interference (non-intervention) rule is the cornerstone of mutual rights and duties of states as members of the international community.¹⁵⁷ The principle of non-intervention is an absolute concept. In practice the right of exclusive control of matters under domestic jurisdiction is conditional. It does not apply to aggressor states and a massive example of non-application of this right is the case of German defeat following the aggressive war of Nazi Germany. The right of non-interference was replaced by the right to intervene in internal affairs of the Axis states. This right was limited by the general agreements between the Allies regarding the purpose of intervention, although it may be argued that the extent of Soviet intervention into the internal affairs of the conquered countries has transgressed the authorization to intervene in the internal affairs of these occupied countries. In addition the Soviet Union interfered in the internal affairs of the Allied countries (Poland and Czechoslovakia) which in the course of the war were a theater of military operations against Germany. The Soviet practice in the early years of the post-World War II period seemed to indicate that restraints of the principle of non-intervention in the internal affairs would not operate within the Soviet sphere of influence in Eastern Europe and Finland. The fact that under Soviet influence Eastern European countries became part of the socialist system and that Finland was included in the Soviet defence system gave the Soviet Union the right to intervene to maintain that system.

For quite some time the conviction that the Soviet Union had the right to intervene was shared by the regimes set up by the Soviet Union in the Eastern European People's Democracies. So, for instance, in the early years of the communist regime in Bulgaria a simple rebuke printed in Moscow's *Pravda* changed the attitude of the government of that country in important matters of foreign policy, including the plans for the Balkan federation. Furthermore, during the meeting of the Cominform (December 6, 1949) the First Secretary of the Rumanian Communist Party confirmed that liquidation of Titoism in Rumania had been prompted by the personal intervention of Stalin. During the eighth Plenum of the Central Committee of the United Workers' Party in Poland, a member of the Central Committee admitted that security matters in Poland were handled from Moscow and that people were liquidated by Soviet agents without the participation or consent of Polish authorities.

At times, however, some gross interference with the local governmental processes led to protests and to difficulties in relations with the Soviet Union. One of the first instances of this type of conduct was the case of the intrigue of a Soviet ambassador against the Yugoslav regime in 1947 and 1948. The protest of the Yugoslav government merited the following answer of the Soviet government, which justified Soviet intervention into the internal

affairs of Yugoslavia by the fact that both countries were communist countries:

"They (the Yugoslav Government) identify the Soviet ambassador, a responsible communist, who represents the Communist Government of the USSR, with an ordinary bourgeois ambassador, a simple official of a bourgeois state, who is called upon to undermine the foundations of the Yugoslav state . . . such an attitude means the negation of all friendly relations between the USSR and Yugoslavia . . . The Soviet ambassador, a responsible communist, who represents a friendly power, which liberated Yugoslavia . . . not only has the right but is obliged, from time to time, to discuss with the communists of Yugoslavia, all questions which interest them."¹⁵⁸

A similar affair involving a Soviet ambassador was revealed in connection with the coming into power of the liberal communist regime in Czechoslovakia in the Spring of 1968. Here, too, a Soviet ambassador intervened in order to continue and strengthen the regime of Antonin Novotny representing the reactionary wing of the Czechoslovak Communist Party.

Liquidation of Stalin's heritage in Eastern Europe brought to light an organized system for the control of the internal affairs by the Soviet government, especially through security agencies. One example which came to light in connection with the government change in Czechoslovakia was the murder of Czechoslovak Foreign Minister Masaryk in February, 1948. A Czechoslovak government inquiry revealed that he was murdered by Soviet agents officially attached to the local security agency. Further, in Poland the Supreme Court included a special chamber consisting of Soviet judges which handled all cases involving the security and political interests of the Soviet Union.

On the day of the 1948 elections in Czechoslovakia, the Soviet Union marched eight army divisions from Germany to Austria to remind the Czechoslovak electorate of its presence. In 1961 it became quite clear that President Kekkonen of Finland would not be elected because his subservience to the Soviet government had made him unpopular with the Finnish electorate. In October of that year the Soviet government raised the question of reintroducing Soviet garrisons into Finland under the terms of the mutual assistance treaty. On November 15, 1961, Kekkonen was visited by Gromyko and the same day Kekkonen dissolved the parliament. Ten days later Kekkonen paid a visit to Khrushchev and in February, 1962, was reelected for another six-year term. The matter of Soviet garrisons in Finland was dropped.

Direct armed intervention in Hungary during the Fall of 1956 and the threat of the use of force in Poland also preserved Soviet influence in both of these countries.

In August 1968 armies of five Warsaw Pact countries with Soviet forces providing the main contingent invaded and occupied Czechoslovakia in order to halt the liberalization drive in that country, and the reorientation of

its foreign trade towards the West. This case of Soviet intervention deserves special attention as it was the outcome of a long process of consultation between the members of the WTO, and represents an effort to provide and establish legal conditions for the intervention into the internal affairs of any of the Warsaw Pact countries by its allies. It also sets the limits to the internal autonomy of a socialist country within the Soviet sphere of influence.

The inefficiency of the Czechoslovak factories closely integrated with the Soviet economy had forced the government to reorganize Czechoslovak industries, firstly by providing a higher degree of independence for factory managers and secondly by directing most of its trade westward. These reforms were not a simple matter, however, and could not be confined to economic aspects alone. Ousting of the Stalinist conservatives called for the liberalization of the public life of Czechoslovakia, and greater freedom of expression for Czechoslovak scholars and intellectuals. The economic reform became one of the many issues of the political and cultural reorientation. To some extent the program of reforms included also a reappraisal of the leading role of the Soviet Union in the socialist Commonwealth and the criticism of the Soviet understanding of the current international situation.

First steps towards the new regime were made at the January, 1968, session of the Central Committee of the Communist Party of Czechoslovakia, at which the Stalinist faction lost control of the Party institutions and was largely removed from leading positions.

Among others President Antonin Novotny was forced to resign, and eventually was expelled from the Party.¹⁵⁹ He was replaced by General Svoboda.

Following the resignation of Novotny the new leadership of the Communist Party of Czechoslovakia held a conference with Soviet leaders with Brezhnev and Kosigin and the communist leadership of Bulgaria, Hungary, East Germany and Poland, in order to allay their fears as to the extent and the political meaning of the new course in Czechoslovak policies.¹⁶⁰

The intervention of Soviet high dignitaries to stem the drive towards the new regime in Czechoslovakia was accompanied by a violent series of attacks, and half threats of the Soviet press, declarations of popular meetings, which passed declarations and resolutions condemning the program of Czechoslovak reforms. At one time the Czechoslovak government warned the Soviet government that its actions interfered with matters which are domestic affairs of Czechoslovakia.¹⁶¹

In the beginning of May, 1968, a conference of the Party leaders from Bulgaria, Hungary, East Germany, Poland and the Soviet Union was held in Moscow in absence of the Czechoslovak representatives, who had refused to attend. Almost simultaneously the movement of Soviet divisions stationed in Poland and East Germany began towards Czechoslovakia.¹⁶² While pressures were mounting, the Central Committee of the Czechoslovak Communist Party at the May meeting began the final round of the liquidation of the conservatives.¹⁶⁴ At the same time the Czechoslovak government

agreed to the participation of Warsaw Pact troops, including Soviet troops to hold military maneuvers in Czechoslovak territory.¹⁶⁴ They had ended in the beginning of July, and while contingents from Poland and East Germany returned home, Soviet troops had remained behind, creating an era of uncertainty and confusion as to the purpose of their presence in Czechoslovakia. In the mounting atmosphere of suspicion and uncertainty the five Communist parties again held a conference in Warsaw (July 14-15); the result of which was a letter addressed to the Czechoslovak communists. It formulated specific demands in connection with the program of reform:

"We have not had and do not have any intention of interfering in affairs that are purely the internal affairs of your party and your state or of violating the principles of respect, autonomy and equality in relations among Communist Parties and socialist countries.

We do not interfere with the methods of planning and administration of Czechoslovakia's socialist national economy or with your actions aimed at perfecting the economic structure and developing socialist democracy.

We shall welcome adjustment of the relations between Czechs and Slovaks on the healthy foundations of fraternal cooperation within the framework of the Czechoslovak Socialist Republic.

At the same time we cannot assent to hostile forces pushing your country off the path of socialism and creating the threat that Czechoslovakia may break away from the socialist commonwealth. This is no longer your affair alone. It is the common affair of all Communist and Workers' Parties and states that are united by alliance, cooperation and friendship. It is the common affair of our countries, which have united in the Warsaw Pact to safeguard their independence, peace and security in Europe and to place an insurmountable barrier in front of the schemes of imperialist forces, aggression and revanche.

At the cost of enormous sacrifices, the peoples of our countries achieved victory over Hitlerian fascism and won freedom and independence and the opportunity to advance along the path of progress and socialism. The frontiers of the socialist world have shifted to the center of Europe, to the Elbe and the Bohemian Forest. And never will we consent to allow these historic gains of socialism and the independence and security of all our peoples to be jeopardized. Never will we consent to allow imperialism, by peaceful or nonpeaceful means, from within or without, to make a breach in the socialist system and change the balance of power in Europe in its favor.

The might and solidity of our alliances depend on the internal strength of the socialist system in each of our fraternal countries and on the Marxist-Leninist policies of our parties, which perform a guiding role in the political and social life of their peoples and states. Subversion of the Communist Parties' guiding role leads to the liquidation of socialist democracy and the socialist system. This creates a threat to the foundations of our alliance and to the security of our countries' commonwealth."

The letter demanded preservation of the principle of "democratic centralism" in the structure of the Czechoslovak government, which constitutes the essence of the communist dictatorship, liquidation of all political organizations which are opposed to socialism and strict censorship and control of the mass communication media.¹⁶⁵

Following the letter, Czechoslovak Communist Party leadership agreed to hold bilateral discussions with the communist parties of the five countries. The first such encounter between the Soviet and Czechoslovak Communist parties was held at Cierna on Tisa (July 29-August 1, 1968). It led to the conference of the six communist parties including the Czechoslovak Party in Bratislava on August 3, 1968. The statement issued by the Conference confirmed the principle of "equality, respect for sovereignty and national independence, territorial integrity and fraternal mutual aid and solidarity." But it also confirmed the principle that "it is possible to advance along the path of socialism and communism only by strictly and consistently following the general laws governing construction of a socialist society and primarily by strengthening the guiding role of the working class and its vanguard—the Communist Parties." (Pravda, August 4, 1968)¹⁶⁶

During the night August 20-21, 1968, Soviet forces supported by contingents from the other four Warsaw Pact countries invaded Czechoslovakia. The first secretary of the Communist Party of Czechoslovakia and his closest associates representing the liberal wing of the party were arrested and deported to Moscow. According to some reports the first secretary of the Czechoslovak Communist Party made the trip in handcuffs. The same day President Svoboda with his advisors was flown to Moscow for negotiations. According to some reports the purpose of the negotiations was the formation of the new regime, substituting more acceptable personalities for the Czechoslovak leaders, who had incurred Soviet displeasure. However, owing to the steadfastness of President Svoboda, no such new regime was produced, arrested leaders were released, and permitted to participate in the negotiations. However, in order to free the country from the invading forces, numbering some 650,000, the Czechoslovak government and party leaders were forced to agree to reestablish censorship, remove certain personalities from the government, abandon the program for the economic rapprochement with the West, and agree to the permanent presence of Soviet troops in Czechoslovakia to be stationed at German and Austrian borders.¹⁶⁷

The meaning of the Czechoslovak case is that as compared with intervention in 1956 in Hungary which was undertaken single-handed by the Soviet Union, the intervention in Czechoslovakia was a collective action. The authority came from two sources. The first, was the decision of the conference of the leaders of the Parties of the socialist countries, an act justified, as appears from the Warsaw letter of the five parties, by the laws of history. The second ground is legally based on the system of alliances binding the members of the WTO.¹⁶⁸

The relationship existing between the Soviet Union and members of the

Socialist Commonwealth gives the principle of non-intervention a special meaning. Interventions of this type are not attacks on sovereignty and independence of other countries:

"Because of its very nature as a socialist state, with no capitalist monopolies, private ownership of production, or exploiting classes, the Soviet Union will never experience, and has never experienced a desire to attack the sovereignty of another country. For that reason there is not, was not, and cannot be any such thing as Soviet expansion, a Soviet messianic complex, or Soviet infiltration and penetration. The fact is that the Soviet Union plays the leading role in the democratic anti-imperialist camp. This role follows from, and is determined by, the laws of history."¹⁶⁹

The Communiqué of the Soviet-Czechoslovak conference in Moscow in August, 1968, following the occupation of Czechoslovakia stated:

"The Soviet leaders . . . confirmed their readiness for the broadest and sincerest cooperation on the basis of mutual respect, equality, territorial integrity, independence and socialist solidarity. The allied troops that temporarily entered Czechoslovak territory will not interfere in the internal affairs of the Czechoslovak Socialist Republic."¹⁷⁰

In a sense therefore, sovereignty and equality of socialist states in relations with the Soviet Union has a dialectical significance. Soviet agents and the Soviet army could control internal affairs of other socialist countries owing to their role in the public life of these countries.

In the perspective of Czechoslovak events it may be doubted whether a socialist country may leave the system of alliances established by the Soviet Union in Eastern Europe, even under the terms of the treaties, which provide for their termination. It also seems that the Conference of the Party leaders, in spite of Rumania and Czechoslovak remonstrations, operates as an organization of the Communist Party, governed by the majority rule. The Czechoslovak case proves that it is not an international conference in a traditional sense.

The case of intervention in Czechoslovakia also suggests that there are certain aspects of a communist regime in any of the socialist countries which must remain a fixed feature of their governments, which are not within the domestic jurisdiction of these countries.

The question remains, does the Czechoslovak case suggest that interventions in the internal affairs of the socialist countries must receive the prior sanction of the majority of the Communist Parties of the Socialist Commonwealth of Nations, thus excluding a unilateral action by the Soviet government. No clear answer suggests itself. On one hand, the technique of the intervention seems to suggest that this is indeed the case. On the other hand, if the WTO acted in defense of axioms of the laws of history, a unilateral action could be also justified.

NOTES

- ¹ Lenin, *Soch.* XIX (4th ed.), 182.
- ² *SU RSFSR* (1917), no. 1.
- ³ *Ibid.* (1917) no. 2.
- ⁴ The Declaration of Jan. 12, 1918, *SU RSFSR* (1981) no. 15.
- ⁵ Cf. Kulski, *Peaceful Coexistence* (1959) 117.
- ⁶ *Pravda*, November 7, 1944.
- ⁷ *Ved.* Febr. 12, 1946, no. 4.
- ⁸ *Za prochnyi mir za narodnuu demokratiu* (1947) no. 10.
- ⁹ Lenin, note 1, XXI, 3-9.
- ¹⁰ Lenin, note 1, XVIII, 309.
- ¹¹ Cf. Chapter I pp. 7, 12.
- ¹² *Pravda*, October 31, 1956.
- ¹³ U.N. Gen. Ass. Official Record, Plenary Session, 799 meeting. See Kulski, note 5, 127-131.
- ¹⁴ *ILC* (1962) 1.
- ¹⁵ *Ibid.* (1949) 21.
- ¹⁶ *Ibid.* (1949) 55.
- ¹⁷ *Ibid.* (1949) 54.
- ¹⁸ *Ibid.* (1949) 229.
- ¹⁹ *Ibid.* (1949) 232.
- ²⁰ *Ibid.* (1962) 59.
- ²¹ *Ibid.* (1963) 69.
- ²² *Ibid.* (1964) 138.
- ^{22a} Tunkin, *Ibid.* (1957) 153.
- ²³ *Ibid.* (1953) 172.
- ²⁴ *Ibid.* (1949) 89.
- ²⁵ *Ibid.* (1952) 114.
- ²⁶ *Ibid.* (1966) 229.
- ²⁷ *Ibid.* (1964) 27; cf. also *Ibid.* (1963) 197.
- ²⁸ *Ibid.* (1963) 69.
- ²⁹ *Ibid.* (1963) 177.
- ³⁰ *ICJ* (1962) 151.
- ³¹ *Ibid.* 229.
- ³² *Ibid.* 230.
- ³³ *ILC* (1960) 281.
- ³⁴ *Ibid.* (1949) 70.
- ³⁵ *Ibid.* (1962) 59.
- ³⁶ See *supra* p. 5.
- ³⁷ Cf Chapter I p. 5.
- ³⁸ O'Connel, *International Law* (1965) I. 121.
- ³⁹ Mr. Kozhevnikov in the International Law Commission, *ILC* (1953) 172-73.
- ⁴⁰ O'Connel, note 38, I, 116 ff.
- ⁴¹ *ILC* (1949), 73. For the Soviet attitude as regards the implementation of the Covenant on Civil and Political Rights see: Schwelb, "Civil and Political Rights: The International Measures of Implementation," 62 *AJIL* (1968) 833 ff.
- ⁴² Kozhevnikov, *ILC* (1952) 173-74.
- ⁴³ *Ibid.* (1957) 165.
- ⁴⁴ *Ibid.* (1953) 233; cf. *Ibid.* (1953) 259.
- ⁴⁵ *Ibid.* (1953) 236.
- ⁴⁶ *Ibid.* (1952) 260.
- ⁴⁷ *Ibid.* (1952) 119.
- ⁴⁸ O'Connel, note 38, I, 138 ff.
- ⁴⁹ *ILC* (1949) 85.

- ⁵⁰ *Ibid.* (1949) 95.
- ⁵¹ *Ibid.* (1962) 241.
- ⁵² *Ibid.* (1965) 25.
- ⁵³ *Ibid.* (1959) 111.
- ⁵⁴ *Ibid.* (1959) 113.
- ⁵⁵ *Ibid.* (1962) 249.
- ⁵⁶ *Ibid.* (1949) 78.
- ⁵⁷ Cf. Chapter I p. 42.
- ⁵⁸ Cf. Chapter I, pp. 16-22.
- ⁵⁹ Cf. Lee, "The Mexico City Conference of the United Nations Special Committee on Principles of International Law Concerning Friendly Relations and Cooperation among States," *The International and Comparative Law Quarterly* (1965) 1296-1313.
- ⁶⁰ *ILC* (1965) 134.
- ⁶¹ See *Ibid.* (1962) 249.
- ⁶² *Ibid.* (1959) 111.
- ⁶³ *Ibid.* (1959) 103.
- ⁶⁴ *Ibid.* (1962) 246.
- ⁶⁵ *Ibid.* (1962) 211.
- ⁶⁶ *Ibid.* (1961) 255.
- ⁶⁷ *Ibid.* (1962) 102; see also *Ibid.* (1959) 25, and 41, also *Ibid.* (1965) 166.
- ⁶⁸ *Ibid.* (1955) 43.
- ⁶⁹ See *infra*.
- ⁷⁰ See *infra*.
- ⁷¹ *ILC* (1949) 98.
- ⁷² *Ibid.* (1964) 53.
- ⁷³ Tunkin, *Ibid.* (1966) part I, 66.
- ⁷⁴ *Ibid.* (1966) 61.
- ⁷⁵ *Ibid.* (1962) 66.
- ⁷⁶ Cf. *supra*.
- ⁷⁷ Note of July 22, 1921, *Dok.* IV, 228, see note 110 *infra*.
- ⁷⁸ *Ibid.* VI, 122.
- ⁷⁹ *Ibid.* VIII, 359.
- ⁸⁰ *Ibid.* VI, 30.
- ⁸¹ *Ibid.* IV, 224.
- ⁸² *PCIJ*(B) no. 5.
- ⁸³ *Dok.* 204, III VI, 222, 340, 440, 418, VII, 467.
- ⁸⁴ U.S. Department of State, publ. 3023, *Nazi-Soviet Relations 1939-1941* (1948) p. 107. Cf. *infra* pp. 137-328, 433, 444-45.
- ⁸⁵ *SDD* XII 76-77.
- ⁸⁶ *ILC* (1964) 71.
- ⁸⁷ *VPSS* (1947) 216-239.
- ⁸⁸ Grzybowski, *Soviet Private International Law* (1965) 86 ff. Cf. *SGP* (1955) no. 8, 121-22.
- ⁸⁹ Soviet Association of International Law, "Draft Declaration of Principles of Peaceful Coexistence," *Report of the Fiftieth Conference*, International Law Association 1962 (1963).
- ⁹⁰ *ILC* (1957) 165.
- ⁹¹ *Ibid.* (1959) 149.
- ⁹² Lunts, *Mezhdunarodnoe Chastnoe Pravo* (1959-1963) II 86.
- ⁹³ Grzybowski, note 88, 111 ff.
- ⁹⁴ *Ibid.* 121.
- ⁹⁵ Taracouzio, *The Soviet Union and International Law* (1935) 45-46,
- ⁹⁶ Grzybowski, note 88, 167-68.
- ⁹⁷ *ILC* (1962) 37.
- ⁹⁸ *Ibid.* (1966) 66.

⁹⁹ Cf. *supra* n. 499.

¹⁰⁰ *ILC* (1963) 57.

¹⁰¹ US Dept. of State *Bulletin* (1946) 1154; cf. Dallin, *Soviet Russia and the Far East* (1948) 244.

¹⁰² Grzybowski, *The Socialist Commonwealth of Nations* (1964) 144.

¹⁰³ January 28, 1919, *Dok.* II, 50.

¹⁰⁴ Byelorussia adopted a law on March 24, 1944, to establish the Ministry of Foreign Affairs. Until 1958 Byelorussia was represented in the United Nations by the Soviet delegation. Since 1958 a separate Byelorussian delegation at the U.N. in New York was established. Byelorussia participated since April 8, 1946, in the Committee for the Affairs of the Refugees and the Displaced Persons and in the Paris Conference in 1946. It joined together with Ukr. SSR and the Soviet Union UNESCO, and ILO in 1954. After World War II, Byelorussia and Soviet Ukraine signed Paris Peace Treaties, conventions sponsored by the United Nations, ILO, and UNESCO, Byelorussia, Ukraine and Soviet Lithuania concluded repatriation agreements with Poland (See *infra* 246). *BSSR na mezhdunarodnoi arene*, (1964) Kislov edit. Cf. Vasylyl Markus, *L'Ukraine Sovietique dans les relations internationales 1918-1923 Paris* (1959). Zabigajlo, Michajlovskii, *Ukrainskaia SSSR v mezhdunarodnykh otnosheniakh* (1959).

¹⁰⁵ *HMSO* Cmd 1667 (1922) 42-43. See also Marek, *Identity and continuity of States in Public International Law* (1954) 36 ff.

¹⁰⁶ Marek, note 105, 37 ff. 418.

¹⁰⁷ 1. Gsovski, *Soviet Civil Law* (1949) 309-331; Kleist, *Die völkerrechtliche Anerkennung Sowjetrusslands* (1934) 74-75; Pashukanis, *Ocherki po mezhdunarodnomu pravu* (1935) 80-84; *Mezhdunarodnoe pravo* (1951) 107 ff; *Mezhdunarodnoe pravo* (1947) 154 ff; Krylov, "La doctrine sovietique du droit international," 1 *RCADI* (1947) 437.

¹⁰⁸ Marek, note 105, 38.

¹⁰⁹ *SDD* I-II, no. 67.

¹¹⁰ In its note of January 3, 1919, addressed to the German government, Soviet government protested against an agreement arrived between governments of Sweden, Finland and Germany, concerning the demilitarization of the Aaland Islands and in particular against the destruction of the fortifications, which according to the Soviet note constituted the property of the Russian Republic (RSFSR). *Dok.* II, 12.

Similarly in the note of October 2, 1919, the Soviet government protested against the impending decision of the five main allied powers (France, Great Britain, Italy, USA and Japan) regarding the award of the Aaland Islands to Finland or Sweden, claiming security interests and the exclusive right to decide the fate of those islands. Soviet government contended that the right of selfdetermination in this case must be understood to involve the nations of the RSFSR. It stated that Allied Powers have "usurped the power which does not belong to them, and dispose of the territory without knowledge and against the will of the peoples, which are concerned in this issue, and the will of the working masses, affected by this decision." *Dok.* II. 252-53. In this note the principle of selfdetermination is interpreted as involving the decision of the RSFSR although Aaland Islands ethnically are not a part of Russia.

In the note of July 10, 1921, addressed to a number of states Soviet government protested against disbursal of sums which were the property of the former Russian Empire for relief of Russian refugees, claiming the exclusive right to control these monies. *Dok.* IV, 218.

In the note of July 23, 1924, addressed to the government of Persia, Soviet government claimed all territorial rights in Persia acquired by Russia in exchange for certain localities which were included in the territory of the Russian Empire. *Dok.* VII, 412.

¹¹¹ See note 105.

¹¹² *Dok.* II 185.

¹¹³ *Dok.* IV 447.

¹¹⁴ *HMSO* Cmd 1667 (1922).

¹¹⁵ 28 *AJIL* (1934) supplement no. 1, 10.

- ¹¹⁶ *Foreign Relations of the United States* (1933) II, 804.
- ¹¹⁷ Bobrov, "Dva voprosa teorii priznania novikh gosudarstv i pravitelstv," *SGP* (1958) no. 1, 82.
- ¹¹⁸ Gsovski, Grzybowski, *Government Law and Courts in the Soviet Union and Eastern Europe* (1959) 1, 467.
- ¹¹⁹ Lenin, *Soch.* XXXI, 110.
- ¹²⁰ Avakov, *Pravopreemstvo sovetskogo gosudarstva* (1961) 13.
- ¹²¹ Kozhevnikov, *Sovetskoe gosudarstvo i mezhdunarodnoe pravo* (1948) 32.
- ¹²² *Mezhdunarodnoe Pravo* (1947) 153.
- ¹²³ See *supra*.
- ¹²⁴ Avakov, note 120, 14-15.
- ¹²⁵ Kozhevnikov, note 121, 45.
- ¹²⁶ *Bolshaia Sovetskaia Entsiklopedia* (1954 ed.), I, 131.
- ¹²⁷ *Za prochnyi mir za narodnuiu demokratiu*, Nov. 10, 1947; see also *Mezhdunarodnoe pravo* (1947) 103.
- ¹²⁸ Korovin, "O mezhdunarodnom znachenii Stalinskoi konstitutsii" *SGP* (1951) no. 12, 15.
- ¹²⁹ Cf. Kozhevnikov, "J. V. Stalin ob osnovnikh printsipakh mezhdunarodnogo prava," *SGP* (1949) no. 12, 90; Korovin wrote at the same period that "Sovereignty in its Soviet form is the first historical instance of the truly popular and national sovereignty" in "Vklad SSSR v mezhdunarodnoe pravo," *SGP* (1947) no. 11, 24.
- ¹³⁰ *Pravda*, October 31, 1956.
- ¹³¹ *Pravda*, March 7, 1959.
- ¹³² *Kommunist*, no. 12, 1962.
- ¹³³ *Pravda*, Jan. 25, 1961.
- ¹³⁴ *SDD*, XVIII, 271.
- ¹³⁵ *Ibid.*, XX, p. 205.
- ¹³⁶ *Ibid.*, XX, p. 208.
- ¹³⁷ *Ibid.*, XX, p. 212.
- ¹³⁸ *Ibid.*, XX, p. 215.
- ¹³⁹ *Ibid.*, XX, p. 218.
- ¹⁴⁰ *Ibid.*, XX, p. 221.
- ¹⁴¹ *Ibid.*, XX, p. 224.
- ¹⁴² *Ibid.*, XX, p. 227.
- ¹⁴³ *Ved.* (1963), No. 30.
- ¹⁴⁴ Siliuanov, Kudriashov, "Mezhdunarodnaia organizatsia novogo tipa," *VT* (1960) no. 9, 3.
- ¹⁴⁵ *Pravda*, June 7, 1962.
- ¹⁴⁶ *Pravda*, October 31, 1956.
- ¹⁴⁷ Tunkin, "Novyi tip mezhdunarodnykh otnoshenii i mezhdunarodnoe pravo," *SGP* (1959) no. 1, pp. 81-94.
- ¹⁴⁸ Korovin, "Zaiavlenie soveshchania predstavitelei kommunisticheskikh i rabochikh partii i zadatchi nauki mezhdunarodnogo prava." *Vestnik Moskovskogo Universiteta*, Seria X, Pravo (1961), no. 3, p. 70.
- ¹⁴⁹ Montias, "Uniformity and Diversity in the East European Future." Paper delivered at the First Convention of the American Association for the Advancement of Slavic Studies, New York, 1964.
- ¹⁵⁰ Shurshalov, "Mezhdunarodno-pravovye printsipy sotrudnichestva sotsialisticheskikh gosudarstv," *SGP* (1962) no. 7, 95-105, at 100.
- ¹⁵¹ Shurshalov, *Mezhdunarodno-pravovye formy sotrudnichestva sotsialisticheskikh gosudarstv* (1962) 35-36.
- ¹⁵² Cf. *infra* pp. 18, 364 ff.
- ¹⁵³ In April 1968 Gheorghe Gheorghiu Dej Rumanian leader during the Stalin and post-Stalin era, who died in 1965 was denounced as responsible for the killings and liquidations of the other Communist leaders in the Stalinist period. His denunciation

was connected with a purge of the higher Party authorities and of the Rumanian government of personalities opposing the Rumanian Party Secretary Ceausescu. (*NYT*, April 28, 1968).

¹⁵⁴ See *Le Monde*, March 2, 1967.

¹⁵⁵ *Soviet Yugoslav Dispute* (1948) 58-60, cf. *The Economist*, March 9, 1968, 13-14. Following Soviet Yugoslav reconciliation in 1955 Soviet *Pravda* wrote "The Communist Party of the Soviet Union considers it desirable to establish contact and rapprochement between the CPSU and the Union of Communists of Yugoslavia on the basis of Marxist-Leninist principles. The first results have now been achieved and the prerequisites have been established for this contact and rapprochement. It is hoped that rapprochement with the Union of Communist of Yugoslavia will continue and develop on the basis of Marxist Leninist principles. This corresponds to the interests of the people of the Soviet Union and Yugoslavia. The working people of Yugoslavia realize that there is not and cannot be any threat to the Yugoslav people and the national independence of Yugoslavia from the Soviet Union."

And yet the Communist Party of Yugoslavia has not established those relations, and has preferred to develop Soviet-Yugoslav cooperation on the interstate platform.

¹⁵⁶ *NYT*, April 17, 23, and 28, 1968.

¹⁵⁷ Cf. *supra*.

¹⁵⁸ *Soviet-Yugoslav Dispute*, note 155.

¹⁵⁹ *NYT*, March 23, 1968.

¹⁶⁰ *Ibid.*, March 24, 1968.

¹⁶¹ *Ibid.*, May 9, 1968.

¹⁶² *Ibid.*, May 9 and 10, 1968.

¹⁶³ *Ibid.*, May 30, 1968.

¹⁶⁴ *Ibid.*, May 25 and 30, 1968.

¹⁶⁵ *Pravda*, July 16 and 18, 1968, *NYT*, July 19, 1968.

¹⁶⁶ *Pravda*, August 4, 1968.

¹⁶⁷ *Pravda*, August 27, 1968; *NYT*, August 29 and Sept. 2, 1968; *The Economist*, Sept. 7-13, 1968.

¹⁶⁸ Cf. *infra* pp. 377-81.

¹⁶⁹ Leonidev, *New Times* (1948) no. 45, 7.

¹⁷⁰ *Pravda*, August 27, 1968.

Chapter III

JURISDICTION

I. TERRITORY

A. Scope of Territorial Control and Its Principle

The Soviet approach to territorial questions resulted from pragmatic policies and had little foundation in doctrinal considerations. In spite of internationalist doctrines of Marxism, the realities of the revolution placed great emphasis on the control of the territorial expanses of the Russian Empire. From its inception, the Soviet Union sought to establish an administrative system based on territorial control as a cohesive and centralized state with firmly determined frontiers.¹

From a general viewpoint the Soviet technique of state building did not differ significantly from the practice of other modern states, but the economic and political aspects of Soviet society added a new dimension to the territorial power of the Soviet state.

It is frequently said that the Soviet Union is a civil law country. During the last decades of the imperial regime, Russia was moving towards a legal order which was broadly influenced by the legislative techniques and forms practiced in Western Europe, particularly France. Nevertheless, at the end of the imperial regime, the influence of the civil law was still (in spite of planned reforms) very limited and had contributed little to those basic legal assumptions which, though not a part of the international law system, gave substance to international law institutions; for example, the system of property relations, the position of the individual, and the position of various social groups in the public life of a country. In the modern state, public authority is but one of the many participants in the legal, economic and social life of a country as it competes with individuals, economic associations and institutions, and social organizations. Jurisdiction and sovereignty are linked exclusively with the idea of *imperium* and do not include a monopoly of economic activity or the exclusive ownership of land and of the means of production. In the Soviet doctrine of the state and of public power the state's exercise of power includes both *imperium* and ownership.² Jurisdiction in the Soviet public order is a broader concept which cannot be accommodated within institutions of the civil law which, due to the Roman law tradition, distinguish between property and public power. Indeed, total control over

economic assets was the essential aspect of sovereign power in Soviet constitutionalism, which excluded participation of foreign capital in the economic life of the state.

The control of the means of production and particularly the state monopoly of commerce and industrial activity to the exclusion of other participants, whether domestic or foreign, from the economic life of the Soviet Union was constantly underscored by the Soviet government. Economic sovereignty was an essential aspect of internal jurisdiction. As the Soviet chief delegate to the Paris Peace Conference (1946) stated:

"... some countries had suffered heavily during the War, whereas others had not. M. Molotov quoted a figure of 679 billion rubles which represented the cost of damage done in Russia. On the other hand, he quoted figures from the World Almanac of 1946 showing the increase in the national income of the United States from 96 billion dollars in 1941 to 160 billion in 1944. He thought that if American and British capital had a free rein in countries which suffered heavily during the war... such countries would be ruled by private capital in England and America." An unlimited freedom for international economic cooperation would only result in increased economic subjugation, economic balances of the post-war period leaving no chance to preserve the 'economic sovereignty' of the war-weakened nations from the supremacy of the Western and particularly American capital.³

Soviet scholars and diplomats are aware of the fundamental difference between the traditional and Soviet approaches to the problem of territorial jurisdiction. They claim, however, that the distinction made by the bourgeois jurists, viz. distinguishing between *imperium* and the property of national territory, is contrary to fact and that international practice knows many instances of sale and lease of territory, indicating the property approach to jurisdiction.⁴

Implications of the Soviet approach to territorial jurisdiction become apparent when considered in connection with the acquisition of territory by the Soviet Union. Extension of Soviet power over a territory ceded by another state, or acquired by the *debellatio* of that state also means an extension of property relations and monopolistic power of its government in the field of industrial and commercial activity. In the case of the exchange of territory between Poland and the Soviet Union, the Soviet concept of property and its industrial regime was introduced into the Polish territories it had then occupied, whereas the Polish system was introduced into the formerly Soviet territory. Moreover, the exchange of territories included an exchange and resettlement of populations.⁵ Certainly it is inconceivable for the Soviet Union to preserve property relations which would continue private ownership of land, factories, mines, banking, insurance or means of transportation in the newly annexed territory. The establishment of the Soviet regime of property relations on a territory incorporated into the Soviet Union is at times a reason for some form of compensation. The

example of exchange of territories with Poland after World War II indicates that while the Soviet Union had a right to impose its regime upon the acquired territory, Poland also had the same right as regards the territory received in exchange. In the Soviet-German agreements of August 27, 1918, the Soviet government agreed to reimburse German citizens for the confiscation of their property on the basis of Soviet legislation.⁶ Another example where a right to reimbursement was acknowledged was Soviet agreement with the government of Canada to compensate Canadian citizens for the loss of nickel mines in the Region of Petsamo, which became Soviet government property owing to the cession of this territory by Finland in a peace treaty with the Soviet Union. The rationale for this approach seems to be that as a rule extension of Soviet power means also the change of the legal statute of the population inhabited on the newly acquired territory.⁷

The 1947 Peace Treaty with Finland gave to the Soviet Union a naval and military base in Porkkala Udd and district on a fifty-year lease. The establishment of the lease involved the total removal of the Finnish population, the control of communications, and the replacement of the Finnish legal system by the Soviet legal system. The only right which Finland continued to exercise was the right to run sealed trains to Norway through the leased district.⁸

The territory of the Soviet Union consists of the territories of the Union Republics. There is no federal district or territory in the Soviet Union. The respective republics with maritime provinces extend their jurisdiction over the territorial seas and all those areas that are claimed as the territory of the Union. Their frontiers are determined by Union legislation and territorial policy is the responsibility of the Union government. Physically the territory of the Soviet Union consists of the land areas under Soviet jurisdiction, inland and territorial waters, and air space over the land areas and territorial waters. To these must be added islands already under Soviet sovereignty and those that may be discovered and taken in possession within the so-called Arctic sector belonging to the Soviet Union.⁹

Since its formation the Soviet Union's international relations and its status as a personality in international law have been that of a unitary state. The Soviet Union maintained international relations and had a monopoly of foreign trade and treaty-making power. Under that scheme Union republics, although recognized under the Constitution (Article 17) as carriers of national sovereignty and assured that their territory could not be changed or modified without their consent (Article 18), had no standing in international relations and international law.

The law of February 1, 1944, granted Union republics the right to maintain relations with foreign states, conclude international treaties, and maintain diplomatic and consular relations with foreign powers. In accordance with this law, the Soviet Union is no longer the exclusive representative of the individual republics in international relations. Its powers, in addition to representing the Union as such, include also "establishment of the general

rules regarding the relations of the Union Republics with foreign states" (Article 14 of the Constitution). The question arises as to what are the powers of a Union republic to make treaties in regard to territory.

A direct provision either in the Constitution or in a separate law issued under the authority of Article 14a of the Constitution is lacking. It seems, however, that a Union Republic has no right to make treaties involving acquisition or loss of territory. In the first place, all territorial changes, including those between the Union republics, are made by the Union. The Constitution (Article 18) provides that such changes cannot be made without the agreement of the Union Republic concerned. It seems, therefore, that both in internal relations between the republics of the Union and *a fortiori* in international relations, republics have no right to make treaties involving territorial changes.

This viewpoint seems to be strengthened by the fact that agencies of the Soviet state concerned with defense, protection, police, and customs control are those of the Soviet Union. The foreign trade mechanism is exclusively controlled by the Soviet Union. While individual republics do have the right to maintain military forces (Article 18b), troops for frontier protection are under the exclusive control of the Union.

B. Territorial Transactions and the Principle of Self-Determination

The Decree on Peace issued as the first act of the Bolshevik government declared that annexation of territory without the consent of the population was illegal. Future territorial changes could take place exclusively on the basis of the self-determination of nations. Furthermore, nations had a right either to secede and form their own states or to form a state (federal perhaps) with other nations. The right of nations to self-determination was recognized irrespective of their size, cultural level, or location (in Europe and other parts of the world).

Annexation was described as "an illegal grab of foreign territory, contrary to the legal conscience of democracy in general and the working classes in particular, all acquisition by a greater or stronger state of a smaller and weaker nationality without a scrupulous, clear and free expression of agreement of this nationality, without regard whatever to how developed or backward the nation is which is forcibly annexed, or forcibly retained within the frontiers of the given state, and finally irrespective from where this nation lives, in Europe, or in the countries beyond the oceans."¹⁰

The will to independence of that subjugated nation, expressed either by meetings, decisions of political parties or in armed uprisings makes continued occupation an annexation.¹¹ This decree was followed by the Declaration of the Rights of Nations in Russia, which recognized their equality and sovereign status on November 2, 1917. The declaration of January 12, 1918 by the Soviet authority offered the newly independent nations the right

to sue on their own volition to be admitted to the federation of the Russian Soviet Socialist Republic (RSFSR).^{11a}

The principle of self-determination, as initially formulated, was the right which belonged to national groups as such with out taking account of class distinctions.

During the Brest-Litovsk Peace Conference, December 9, 1917, the Russian delegation stated the principle of self-determination in greater detail. Self-determination included the prohibition of annexations as regards territories occupied during the war and the return of political independence to those nations which were deprived of that independence in the course of the war. Further, the self-determination principle provides that national groups which, until the war, were deprived of statehood should be granted an opportunity to decide in popular referendum their political future either in union with one or another state or as independent states.¹²

The Russian delegation at the Brest-Litovsk Conference also rejected as inadequate and unacceptable declarations of various political organizations from the territories occupied by the armies of the Central Powers. It was claimed that they were made by organizations and institutions which were not representative of their populations and that such declarations were made while foreign occupation persisted and, therefore, were suspect in terms of being a manifestation of the true will of the populations involved.¹³

In a decree dealing with the future of Turkish Armenia, which was issued in the same period, the Bolshevik regime fixed the conditions for the final resolution of that country's political future as follows: withdrawal of troops (Russian imperial army), return of the refugees, formation of the local militia force, and establishment of the provisional popular government in the form of the Soviet Chamber of Deputies for the Armenian nation, elected democratically. The decree also included special provisions regarding the ethnically mixed areas and their final union to either Armenia or Turkey.¹⁴

At times, however, there was no doubt on the part of the Soviet regime as to what was the will of a given ethnic group. For instance, the decision of the People's Commissars recognizing the independence of Finland (December 1917) provided for the creation of a mixed commission in order to resolve all those questions which are connected with the separation of Finland from Russia.¹⁵

Initially the right of secession was not linked with the wish to establish any particular order or governmental system. The right of secession was granted to national and ethnic groups irrespective of their economic and social condition and was certainly not made dependent upon the desire to establish a Soviet order within a national territory.

Later this position underwent a slight change. The resolution of the II All Russian Conference of the Soviets of January 15, 1918, approving the policy of the Soviet government, underlined the fact that it promoted the self-determination of the working masses of Russia.¹⁶ During the following period the efforts of various ethnic groups to establish their own states or to

join other national states met with objections from the Soviet government on the ground that the will to secede from Russia was not properly expressed.

One of the first instances of this attitude was the communication from the German government which intervened on behalf of the Latvians and Estonians, informing the Soviet government that national institutions representing Estonian and Latvian populations had expressed a desire to establish their own states. The Soviet government insisted that this was not enough and that the establishment of such states required the cooperation of the Soviet government. Moreover, the Soviet government claimed that the class composition of the Latvian and Estonian delegations was such that they could not claim to be proper representatives of these nations.¹⁷

Similar arguments were adduced in the protest against the Rumanian government's decision regarding the future of Bessarabia and Valachia. Rumania's decision to incorporate these provinces followed a resolution of a National Assembly of the Valachian and Bessarabian people to join Rumania. The Soviet government claimed the assembly was representative exclusively of the capitalist and exploiting classes and was an act of violence against the political aspirations of the masses.¹⁸

During later years, in diplomatic exchanges with governments of neighboring countries, the Soviet government, whenever territorial disputes arose, advanced the principle that solutions to territorial questions had to be sought by means of a referendum of the working classes.¹⁹

Initially the Soviet attitude regarding the question of how the principle of self-determination was to be given effect was somewhat ambivalent. With regard to Poland and Finland the Bolshevik regime recognized these states' independence without question. The Bolshevik regime insisted moreover on no formalities as regards the declarations of a popular wish for a separate statehood in these two instances, thus perhaps reflecting the conviction that Poland and Finland enjoyed a special status within the framework of the Russian empire. Otherwise, self-determination was not a unilateral act. Other nations which were part of the Russian empire had the right to establish their own states only in cooperation with the Russian Republic. The interests of the working masses of the Russian empire had to be taken into account as regards the destiny of certain parts of the former Russian territory, even those inhabited by a non-Russian population.

In the note of the RSFSR government to the governments of France, Great Britain, Italy, United States and Japan on October 2, 1919, a protest was lodged against the Soviet government's omission from the conference which was to decide the question of the future of the Aaland islands and their assignment to either Finland or Sweden. Chicherin, the Soviet Foreign Commissar, pointed out that the geographic position of the Aaland Islands at the entrance to the Finnish Bay tied their future to the needs and requirements of the Russian nations, and that consequently Russian

participation in the conference and her agreement to its decision were indispensable.²⁰

A visible change in the diplomatic use of the principle of self-determination occurred later when Soviet relations with neighboring countries and with the major powers were stabilized. For instance, although the decree of the Soviet of People's Commissars of August 29, 1918, repudiated the treaties with Austria and Prussia concerning Polish partitions and the Peace Treaty with Poland renounced all Russian rights to the territories west of the Polish-Soviet frontiers, the Soviet Union still upheld its interest in the provinces of Vilna and Eastern Galicia.²¹ The motivation for the various demonstrations of interest in the solution of territorial questions, even those which (e.g., Eastern Galicia) did not involve the territory of the former Russian empire, was, according to Soviet assertions, the general interest in having a proper solution of territorial and national questions in order to reach a situation which would prevent future conflicts.

Also the question of Bessarabia was raised a number of times. The original Russian position in this regard was that as there was no treaty concerning the future of this province binding Russia and the Soviet Ukraine, both Russia and the Ukraine maintained their rights in Bessarabia.²² During the abortive Soviet-Rumanian Conference in Vienna (April 1924), the Soviet delegation reaffirmed the position that only a plebiscite could decide the future of Bessarabia. In its declaration of April 2, 1924, the Soviet delegation to the Conference declared that until such a plebiscite was held Bessarabia is a part of Russian territory and that Rumanian control of Bessarabia and of Northern Bucovina which was formerly a part of Austria, was contrary to international law.²³

C. Soviet Territorial Settlements of the early Period

While the Soviet Union prescribed the formalities of the process of self-determination for other countries, it never followed the prescribed procedures itself. In each case of the establishment of the Soviet regime in a part of the Russian empire, the Red Army was one of the chief agents assisting in the process of conversion to the Soviet order. Further, whenever the Soviet Union was able to resume a policy of territorial conquest, it had acquired territory without the formality of previous establishment of the Soviet regime in the territories concerned. It thus became apparent that the principle of self-determination was applicable to the territories acquired by other, especially neighboring countries, while it did not apply to the territorial acquisitions by the Soviet Union.

Another important aspect of the early policy of the Soviet government was that while the question of the Union of Soviet republics maintaining formal independence was postponed to some future date, the Communist party itself was a unitary, Moscow-centered organization. The fact of formal indepen-

dence of various ethnic groups was not reflected in the Party institutions.

The Eighth Party Congress (March 1919) adopted the following resolution:

"At the present time, Ukraine, Latvia, Lithuania and Byelorussia exist as separate Soviet Republics . . . But this does not mean that the Russian Communist Party should in turn be organized as a federation of independent Communist Parties . . . It is necessary to maintain the existence of one centralized Communist Party with the Central Committee which directs all Party activities in all parts of the RSFSR. All the decision of the Russian Communist Party and of its leading institutions are unconditionally binding on all sections of the Party independently of their national composition. The central committees of the Ukrainian, Latvian and Lithuanian Communist enjoy the rights of the Party regional committees and are entirely subordinated to the Central Committee of the Russian Communist Party."²⁴

1. The Case of the Three Baltic Republics

One of the effects of the Allied victory in the West and the collapse of the imperial regime in Russia was the achievement of independence of the three Baltic Republics, Estonia, Latvia and Lithuania. Following the March 1917 revolution and the emergence of the liberal regime in Russia, the future of the three nations was to be reassessed. After the October Revolution the three nations were given the right to choose full independence. However, it became clear quite early that the right of self-determination as applied to these three nations was interpreted to mean their right to establish Soviet regimes in their territories. While Soviet plans failed, the pattern of Soviet action in their case provided an important insight into the meaning of self-determination as a preliminary stage for the full incorporation of a national entity into the framework of the federal state of the Soviet Union, a plan which was to be realized after the outbreak of World War II.

Estonia was one of the first to enjoy a considerable change of status because of the downfall of the imperial regime. The Provisional Government in one of its first decrees (March 30, April 12, 1917) gave Estonia provincial autonomy with a Provincial Diet under an appointed governor and a district administration under elected councils. After the October 1917 revolution a Communist-dominated Military Committee in Estonia was created which proclaimed the transfer of all power to the Soviet of Soldiers and Peasants Deputies. On January 19, 1918, the formation of an Estonian Workers Commune was announced. The only achievement of the Soviet power thus far was the dissolution of the Provincial Diet. On February 24, 1918, the Soviet authorities left Reval fleeing the advancing German armies and on that same day the higher chamber of the Provincial Diet assembled and declared the independence of Estonia.

Under the terms of the Brest-Litovsk treaty Russia surrendered her

sovereign rights regarding Estonia, Lithuania, Livonia and Courland. After the German defeat the Soviet government repudiated the provisions of the Brest-Litovsk treaty, and as German troops withdrew the advancing Red Army tried to regain control of Estonia. On November 22, 1918, the Russian-Estonian war began. The November 29, 1918 the congress of the Bolshevik Party of Estonia together with the Revolutionary Committee of Estonia declared the independence of Estonia under a Soviet regime; and on December 12, 1918, the Soviet government recognized it as an independent state. However, the war ended with the defeat of the Communists and on February 2, 1920, a Peace Treaty between Estonia and the RSFSR was signed.

The general pattern of events which led to the separation of Estonia was repeated in Latvia with the modification that Courland and Livonia were at the time of the Revolution under full German occupation, except the three Latvian district of the Vitebsk government. On December 30, 1917 the Congress of Workers, Soldiers and Landless Peasants in Latvia announced that Soviet regime had been established in Latvia. On the eve of the German withdrawal the Latvian National Council announced the creation of the Latvian Republic, and on December 17, 1918, the creation of a Soviet Latvian Republic was declared. This was followed by a decree of the Soviet Russian government which recognized the independent Soviet Latvian Republic. Hostilities which followed ended with the defeat of the Red Army, leading to peace negotiations and subsequently a peace treaty of August 11, 1920.

On December 11, 1917, Lithuania was established as an independent republic although it was still under German occupation. In December 1918, following German withdrawal from the Baltic provinces, the Red Army attacked Lithuania. Vilna fell and on December 8, 1918, the creation of a Soviet Lithuanian government was announced, followed by Soviet recognition on December 22, 1918. A Congress of Soviets of Lithuania and Byelorussia took place in Vilna (December 1918-February 1919) and decided upon the creation of the Lithuanian Byelorussian Republic with Vilna as its capital. Then the tides of war changed. The Polish armies recaptured Central Lithuania including Vilna, while Lithuanian national troops supported by the German units drove the Soviet armies from the rest of Lithuania. On July 12, 1920 a Soviet-Lithuanian peace treaty was signed.

Thus the independence of the three Baltic republics had no connection with the principle of self-determination as announced in the Decree on Peace and the Resolution on the Rights of the peoples of Russia. In each case the Bolshevik government sought to suppress national liberation movements and intervened militarily thereby seeking to establish a Soviet regime in each of the three republics. The usual technique was to use military action in support of a communist government or revolutionary committee that was avowedly, representing the communist movement of a given country.

This technique, moreover, was subsequently used when a successful

offensive brought the Red Armies to the gates of Warsaw. In Bialystok on July 30, 1920, a Provisional Polish Revolutionary Committee was established with Marchlewski at its head.²⁵ Another instance of such action was the creation of the Soviet-Finnish government following the outbreak of the Soviet-Finnish war in 1939.

2. The Case of the Ukraine

While Soviet attempts to regain control of the Baltic provinces of the former Russian Empire failed in 1920, similar actions leading to the establishment of the Soviet regime in other provinces of Russia were successful. One of the most important was the case of the Ukraine.

As in the case of Estonia and Finland, the October Revolution and the resulting emancipation of the non-Russian peoples had met with a response in the Ukraine which hardly matched the expectations of the Bolshevik regime. The national ambitions of the Ukrainians were represented by the Central Ukrainian Rada which claimed the loyalty of the countryside and the peasantry. These constituted an overwhelming majority of the Ukrainian population. At the same time a system of Soviets in the Russian pattern began to emerge, but their influence did not extend beyond the urban population, and for a while there was considerable cooperation between the City Soviets and the Central Rada.

In December 1917 the first All Ukrainian Congress of the Soviets was held in Kiev. It coincided with the official recognition of the Ukrainian People's Republic by the Council of the People's Commissars on December 4, 1917, and was combined with an ultimatum which demanded its cooperation in the war against anti-Soviet military detachments on the Ukrainian territory.²⁶

The ultimatum caused mixed reactions in the Congress of the Soviets which was assembled in Kiev, for on the one hand it criticized the policy of the Rada while at the same time it rejected the ultimatum and censured sternly the Bolshevik plans for a centralized state:

"Considering the Ultimatum of the Council of People's Commissars as an attack on the Ukrainian People's Republic, and declaring that the demands voiced in it violate the right of the Ukrainian people to self-determination and to a free creation of forms of political life, the All Ukrainian Congress of Soviets of Peasants, Workers and Soldier Deputies resolves that the centralistic plan of the present government of Moscow (Great Russia) by leading to war between Muscovy and the Ukraine, threatens to break completely the federal relations which Ukrainian democracy strives to establish."²⁷ The Congress warned the Russian Soviet of Peoples Commissars to desist from a policy that would lead to a fratricidal war between the Ukraine and the Russian Republic.

A period of struggle between the Bolsheviks who supported the cause of centralization and those who supported nationalist objectives followed. This

struggle ended when the Ukraine was occupied by the German armies, but was rekindled by the German surrender in the West and the matter of the future status of the Ukraine was in suspension. When the Germans withdrew, the regime of Skoropadskii created by the Germans fell before the advancing armies of the Ukrainian nationalists and it seemed that the Ukrainians had at last won their right to self-determination. At this stage, however, the Central Committee of the Communist Party of Russia intervened and established a Soviet Ukrainian government in the Russian city of Kursk in November 1918, and proceeded to occupy the whole of Ukraine, turning the Ukrainian regime into that of the Soviet republic.

3. *Byelorussia and Other National Entities of Russia*

The fate of Byelorussia was quite similar. The main instrument in the sovietization of Byelorussia was the Russian Communist Party which controlled the Communist Party of Byelorussia and made decisions concerning its future and political relationship to the RSFSR. The Byelorussian nationalists who sought cooperation with the Bolsheviks in order to restore their country to some order and establish the national character of its future regime, were pressing Moscow for permission to form an independent Communist party, but permission was refused.²⁸ As in the Ukraine, political decisions concerning the status of Byelorussia were made by the Russian Communist Party and the country was given a soviet order not by popular will but by military control. At no time was an attempt made formally or informally to consult public opinion as to the future status of the Byelorussian state.

The same pattern was followed in the reconquest of the Moslem lands and of the republics of the Far East. As in the case of the Ukraine and Byelorussia, military conquest followed the request of a local communist party or of a revolutionary regime established by the Communist Party of Russia, frequently not even remotely connected with the national life of the various and concerned ethnic groups striving to establish their own states.

Following the collapse of the imperial regime in Russia there were in existence in the various parts of the Russian empire the following national formations: the Federal Republic of the Peoples of North Caucasus and Dagestan, Transcaucasian Federal Republic, the State of the Kirgizian Alash Horde, Bashkirian Democratic Republic, the Tartar Republic of Idel-Ural, the Mohammedan Republic of Kokand in Turkestan, the Democratic Moldavian Republic, the Free State of the Oirots, the Tartar Trans-Bulach Republic in Kazan, the Democratic Republic of Far East, the Georgian Democratic Republic, Republic of Armenia, Republic of the Caucasian Azejbardjan, the Democratic Republic of Crimea, the Transcaspian Democratic Republic, the Buriat-Mongolian State, the Republic of South-West Caucasus, the Democratic Republic of Kara-Kalpaks, and the Republic of the Pri-Amur Region.

Some of these regimes were little more than local attempts to offer a substitute for the collapse of law and order. Some, however, were based on genuine desire for independence and frequently represented a continuation of traditions of statehood which were sometimes recognized by the former imperial overlords. The Khanates of Khiva (Khoresm) and Bukhara had the position of vassal states and enjoyed a large degree of internal autonomy. In 1920 they were conquered by the Red Armies and organized as a people's republic. Alliance treaties with the USSR guaranteed the two republics independence and autonomy. Soviet government renounced forever all rights and privileges which were claimed by the Russian Empire. In September and October of 1924 the "Kurultais" (popular assemblies) of Khiva and Bukhara decided to terminate their republics and to join the newly formed republics of Turkestan and Uzbekistan, with some districts going to one republic or the other.

4. Territorial Settlements after World War II

World War II offered the USSR a new opportunity for territorial acquisitions. In the West the Soviet Union incorporated Eastern Galicia, Western Byelorussia, and Central Lithuania with the City of Vilna from Poland. In the North it incorporated Lithuania, Latvia and Estonia. From the German Reich it acquired the city of Königsberg which, with its district, went directly to the RSFSR. In the South it obtained the Transcarpathian Ukraine from Czechoslovakia, Northern Bucovina and Bessarabia from Rumania. In the Far East, Tuva, which was an independent republic, was incorporated into the Soviet Union. Finally, at the expense of Japan, Southern Sakhalin and the Kurrill Islands were annexed by the Soviet Union.

a. Annexations from Poland

The new period in Soviet territorial expansion was launched by the Soviet-German Non-aggression Pact of August 23, 1939, and the secret annex to it, which determined the spheres of interest of the German Reich and the Soviet Union. The Soviet sphere included the Baltic states, Finland, Estonia, and Latvia. Lithuania was assigned to the German sphere of influence, and the northern boundary of Lithuania with the Soviet Union was the frontier between the two spheres of influence. It was stated that the claims of Lithuania to the Vilna area would be recognized.

Poland was partitioned into two spheres of influence. The boundary between the German and Soviet areas was to run along the rivers Narev, Virtula and San. In Southern Europe the Soviet Union indicated an interest in Bessarabia.

On September 17, 1939, following the German attack on Poland, the Soviet Union occupied the Eastern provinces of Poland. These provinces were disposed in three ways. The Vilna region went to Lithuania on the basis of a treaty between Lithuania and the Soviet Union.²⁹ The rest of

Polish Lithuania and the Byelorussian provinces of Poland went to Byelorussia. According to a later agreement of final delimitation of the spheres of influence, combined with the treaty of friendship, Germany agreed to place Lithuania in the Soviet sphere of influence. Germany obtained in exchange, the province of Lublin and important parts of the Warsaw province extending on the eastern side of the Vistula River.

Soviet acquisitions in Poland were organized in two territorial units, Western Byelorussia and Western Ukraine. In both of these territories elections were held for national assemblies which then requested admission to the Byelorussian and the Ukrainian SSR. After proper legislation was passed by the Supreme Soviets of these republics, the final delimitation of the districts which went to Byelorussia or Ukraine was made in the decree of December 4, 1939.³⁰

Elections to the national assemblies were later interpreted as plebiscites which had determined the incorporation of these territories in the Soviet Union.

Following the German attack on the USSR in June 1941, the Soviet government concluded with Poland an agreement (July 30, 1941) which declared Soviet-German agreements of 1939 "concerning territorial changes in Poland" to be deprived of force. Nevertheless, in the following period difficulties arose as to the treatment of Polish nationals from the Polish provinces annexed in 1939 to Russia when called to serve in the Polish Army units formed in the territory of the Soviet Union. According to the explanation given by the Deputy Commissar for foreign affairs, Vyshinski (May 6, 1943) the incorporation of the Western Ukraine and of Western Byelorussia into the USSR was the result of the will of the population of these territories, and Soviet citizenship was extended to that population. By way of exception the Soviet government agreed to treat the ethnic Poles, inhabitants of these territories, as Polish nationals in order to facilitate the formation of the Polish Army units.³¹ On March 3, 1943, *Tass* published a Soviet government declaration rejecting the Polish government's claims to the eastern territories of Poland as contrary to the principles of self-determination and the right of the Ukrainians and Byelorussians to live in their own national states.³²

On January 11, 1944,³³ *Tass* further announced that the Soviet government was ready to modify the future Polish-Soviet frontier according to the actual ethnic situation along the so-called Curzon line, while at the same time and on the same principle, Poland should incorporate the ancient Polish lands of which Poland was deprived by the Germans.

The plan to recompense Poland for her territorial losses was approved by the Yalta conference, and on August 16, 1945, Soviet-Polish Delimitation treaty established the Polish-Soviet frontier with reference to the so-called Curzon line, which on the whole corresponded to the Soviet-German frontier as fixed in the Soviet-German Treaty of September 28, 1939, with some departures east of this line in favor of Poland. However, as these territorial con-

cessions interfered with the control of railway communications, on February 15, 1951, a further agreement was made providing for the exchange of a Polish area of some 480 square kilometers for a similar Soviet area in the region of Ustrzyki Dolne.

As these changes involved areas with Polish and Ukrainian populations respectively, exchange of territories was combined with the exchange of populations.

b. Territorial Gains from Finland

The Soviet-Finnish War, 1918-1920, ended with the treaty of Dorpat (October 14, 1920). One of the issues of the war was the question of Eastern Karelia, which was inhabited by the Karelians, a Finnish ethnic group which tended to identify itself with the Finnish nation. Under the terms of the treaty Eastern Karelia remained Soviet, although the terms of the treaty imposed some conditions upon Karelia's organization and regime.³⁴

On October 14, 1939, the Soviet government presented Finland with an ultimatum which included conclusion of a treaty of mutual assistance, the lease of the Hango peninsula with its port to establish a Soviet naval and military base, territorial cessions including a large part of the Finnish isthmus with the city of Viborg, some islands in the Bay of Finland and the demolition of the Finnish fortifications protecting Helsinki, the capital of Finland. The reason for Soviet demands was concern for the security of Leningrad and Murmansk. In exchange the Soviet Union offered a substantial part of Eastern Karelia. Although the Finns were willing to meet Soviet demands half way, they refused to conclude a treaty which would permit Soviet garrisons in Finland and which would destroy the Helsinki fortifications. On November 29, 1939, Soviet troops invaded Finland. In one of the Soviet-occupied Finnish localities, a government of the Finnish People's Republic was formed under Kuusinen, a Soviet citizen of Finnish extraction and a leader in the Comintern. On December 2, 1939, Molotov concluded a Treaty of Assistance and Friendship with Kuusinen's government, providing for the cession to the People's Finland of all districts with a Karelian majority.

Exhausted by the unequal war, Finland sued for peace. The peace treaty of March 12, 1940, gave to Russia parts of the Finnish Isthmus with the city of Viborg (Viipuri) and granted a thirty-year lease of the Hango peninsula, obliterating the Finnish defenses against the Soviet Union. The newly acquired territories were joined with the Karelian districts and a Soviet Finnish-Karelian Republic was established.³⁵ The third Russo-Finnish War (1941-1944) ended in defeat for Finland. In the Peace Treaty of February 10, 1947 Finland was forced to cede the Petsamo area with the port Petsamo, to grant instead of the thirty-year lease of the Hango peninsula the fifty-year lease of the Porkkala Udd, and to demilitarize the Aaland Islands. The Petsamo area, although Finnish territory, was not included in the Finnish-Karelian Republic and was directly annexed to the RSFSR.

On February 3, 1947, the Soviet Union and Finland signed an agreement by which Finland sold to the Soviet Union for the price of 700 million Finnish marks, 176 square kilometers of its territory in the region of the hydroelectric station Janikoski, regulating the dams of Niskakoski on the river Paatso-Joki, including the constructions and equipment present.³⁶

c. *The Incorporation of Estonia, Latvia and Lithuania*

In the course of September and October 1939, the Soviet Union imposed upon the three Baltic republics mutual assistance treaties, which provided for the establishment of Soviet garrisons and naval bases in their territories and also control of certain communication routes in the Baltic area. In June 1940 the governments of the three republics were presented with an ultimatum demanding their reconstruction in order to include persons friendly to the Soviet Union and opening of frontiers to permit the entry of the Soviet armies, leading to the military occupation of the three countries. A month after these events, elections were held to the diets and parliaments of the three republics which then voted for their reorganization into Soviet socialist republics and asked the Soviet government to admit the three new soviet republics to the union. The laws and decrees to this effect were passed by the Supreme Soviet in the beginning of August 1940.

d. *Bessarabia and Bucovina*

In June 1940, the Soviet Union presented the Rumanian government with an ultimatum demanding the evacuation of its troops from Bessarabia and Northern Bucovina.³⁷ These were subsequently incorporated by the decree of the Supreme Soviet of March 8, 1941. Northern Bucovina had never in the past been a part of Russia. The Soviet annexation of Bessarabia and Northern Bucovina was confirmed by the terms of the Soviet-Rumanian Armistice agreements of September 12, 1944, and later by the terms of the peace treaty of February 10, 1947.

e. *Carpato-Ukraine*

During the Soviet occupation of Eastern Czechoslovakia, national councils of the Sub-Carpathian Ukraine held a conference in Munkacs and on November 26, 1944, decided to join the Ukrainian SSR. This resolution was followed by a Soviet-Czechoslovak treaty of June 29, 1945, which provided for the cession of the Sub-Carpathian Ukraine and the exchange of those Czechs and Slovaks who were settled in the territory ceded to the Soviet Union and those Ukrainians who were living in Czechoslovakia. The Sub-Carpathian Ukraine became a part of the Ukrainian SSR.

f. *Königsberg Region*

The Potsdam agreement of August 2, 1945 (section VI) decided that in future territorial settlements, Eastern Prussia shall be divided between Poland and the Soviet Union, and that the Königsberg region beginning

from a specific point in the Bay of Danzig, extending eastward, would go to the Soviet Union. The city of Königsberg was renamed Kaliningrad and with its district was incorporated into the Russian SFSR. The 1945 delimitation treaty with Poland was followed by the delimitation agreement of March 5, 1957. This agreement provided for the demarcation of territories of the two countries which included the East Prussian region and was followed by the protocol of March 18, 1958, regarding the delimitation of the Soviet and Polish territorial waters in the Bay of Danzig.

g. *Tuva*

Before World War I Tuva, a province of Urjanchaj, was a part of Outer Mongolia and was under Chinese sovereignty. It was at that time, however, an area of Russian economic and military penetration. In 1921 the Republic of Tuva was created. The new Republic declared itself to be under the Soviet protection of the RSFSR. In 1925 a formal treaty of friendship between Tuva and the USSR was concluded, and both states exchanged diplomatic representatives. On August 17, 1944, the parliament of Tuva requested the Soviet Union to admit the Tuva region to the Union. This request was granted and the decree of the Presidium of the Supreme Soviet of the RSFSR of October 13, 1944, on the motion of the Supreme Soviet of the USSR, made Tuva an autonomous region of the RSFSR. Its status was subsequently changed into that of an autonomous republic in 1961.

h. *Kurill Islands and Southern Sakhalin*

The Island of Sakhalin was an area of both Japanese and Russian economic and military penetration. In the treaty of Nagasaki (October 24, 1857) both countries agreed to colonize Sakhalin jointly, which finally led to the agreement of 1875, when Russia and Japan agreed to give Sakhalin to Russia while Japan was forced to be contented with the chain of Kurill Islands. After the Russo-Japanese War (the treaty of Portsmouth, 1906) a new delimitation of the Russian and Japanese spheres of influence took place. Japan took Southern Sakhalin, Dairen, Port Arthur and the South Manchurian Railway, while Russia retained the northern part of Sakhalin and the Northern part of the Chinese Eastern Railroad.

At Yalta, when Stalin was setting the price for the Soviet participation in the war against Japan, the United States and Britain agreed that in future territorial settlements in the Far East, the Soviet Union would acquire South Sakhalin and Kurill Islands, would regain control of Dairen and Port Arthur, and would acquire the entire Chinese Eastern Railway. The Armistice agreement with Japan of August 30, 1945, spelled out the areas which went to Russia and the decree of February 2, 1946, incorporated the new areas into the RSFSR.³⁸

5. *The Principle of Territorial Settlements*

Although from the very beginning Soviet leadership had proclaimed a neat and precise doctrine as to the rules governing international relations regarding territory, it infrequently and then only partly adhered to its rules regarding the settlements of territorial questions. On no occasion has the Soviet Union ever arranged for a plebiscite on the issue of the political destiny of a territory. Further, there were no occasions where it sought to establish conditions in which a vote would be taken in absence of its own military force. The voting in national assemblies of the eastern provinces of Poland (Western Byelorussia and Western Ukraine), in the parliaments of the three Baltic republics and in the Congress of the National Councils in Munkacs in Sub-Carpathian provinces of Czechoslovakia took place under the condition of military conquest and political pressure. There were no elections to the national councils of the Sub-Carpathian provinces of Czechoslovakia. In other cases (Baltic Republics and Polish Eastern provinces) the electorate was presented with a single list of candidates and was spared the information that the purpose of the vote was to decide its political future. While territorial expansion in the Baltic countries, Poland and Czechoslovakia were frequently quoted as examples of voluntary accession to the Soviet Union and not of annexation, circumstances in which the decisions to join the Soviet Union were made seemed to indicate that Soviet authorities who controlled the voting procedures were anxious not to permit a free expression of popular will.

In the Brest-Litovsk negotiations the Soviet delegation insisted on a guarantee of the right to self-determination for the national groups inhabiting the German-occupied territory of Russia. However, when German forces withdrew, the Soviet government intervened in internal relations of those national groups and created Soviet puppet governments for those nations and supported them militarily. The territorial settlement following the Molotov-Ribbentrop Pact of August 23, 1939, had as its basis not the self-determination principle, but the mutual determination of spheres of influence of the Soviet Union and Nazi Germany in Eastern Europe. While in the Brest-Litovsk peace negotiation in 1918 Soviet leaders paid lip service to the self-determination rights of the national groups of the German-occupied territories, this aspect had disappeared from German-Soviet relations during the first period of World War II. Alinea two of article 2 of the secret protocol attached to the Soviet-German nonaggression pact stated clearly that, "The question whether the interests of both parties make desirable the maintenance of an independent Polish state and how such a state should be bounded can only be definitely determined in the course of further political developments.

In any event both government will resolve this question by means of a friendly agreement."³⁹

Already on September 20, 1939, the Soviet government indicated that it

was inclined to settle the Polish question by the final partition of Polish territories and on September 25, 1939, Stalin, as reported by the German Ambassador Schulenburg, declared:

“In the final settlement of the Polish question anything that in the future might create friction between Germany and the Soviet Union must be avoided. From this point of view, he considered it wrong to leave an independent Polish rump state. He proposed the following: From the territory east of the demarcation line, all the Province of Lublin and that portion of the Province of Warsaw which extends to the Bug should be added to our share. In return we should waive our claim to Lithuania.”

On September 28, 1939, the two governments signed a Boundary and Friendship Treaty which provided for the final liquidation of the Polish state, in order to “re-establish peace and order in these territories and to assure to the peoples living there a peaceful life in keeping with their national character.”⁴⁰

Another example of the Soviet use of the self-determination principle was Soviet policy towards Iran in the period following World War II.

During the War, Iran was militarily occupied by the Soviet Union and Great Britain. This occupation was followed by the Tripartite Treaty of Alliance of January 29, 1942, between the Soviet Union, Britain and Iran, which assured that not later than six months after termination of hostilities Soviet and British occupation forces would be withdrawn.

In September 1945 Japan surrendered and World War II came to a close. On December 12, 1945, an autonomous republic of Azejbardjan was established in the eastern part of Soviet occupied Iran under a prime minister who was a member of the Comintern. On December 15, 1945, the creation of a Kurdish People's Republic was announced in the Western part of the Iranian territory also under Soviet control. During February and March of 1946, the Soviet Union endeavored to negotiate a settlement, demanding the right to maintain Soviet garrisons in northern Iran, Iran's acceptance of a Soviet regime for the territory of Azejbardjan, and the formation of a joint-stock Soviet-Persian oil company with a controlling Soviet interest in northern Persia. Under the pressure of public opinion, the Soviet government withdrew its troops and the puppet government in northern Persia promptly collapsed.⁴¹

While the principle of self-determination is not a valid ground for the solution of territorial questions involving the provinces of the former Russian empire, it serves, at times, as an important argument for either direct territorial acquisitions by the Soviet Union or for the domination or control of territories where Soviet interests are predominant. Outer Mongolia and East Germany are pertinent cases in point.

On May 25, 1915, China was forced by the Russian government to sign a treaty by which she granted autonomy to Outer Mongolia and agreed to withdraw her troops. Russian troops were stationed in Mongolia, in spite of the fact that the treaty had maintained the fiction of Chinese sovereignty

over Mongolia. After the Revolution in a series of declarations the Bolshevik government gave up all territorial acquisitions in China and announced its readiness to hand over the Chinese Eastern Railway to the Chinese people without any compensation.

As time went on, Soviet leaders modified their statements regarding the railway and insisted on Soviet rights in this respect. Moreover, on November 5, 1921, the Soviet Union signed a treaty with the People's Government of Mongolia in which they recognized its independence, although the 1924 treaty with China had recognized, by way of analogy with the 1915 treaty, Chinese sovereignty over that country. Mongolian independence vis a vis China was a function of Soviet penetration and growing Soviet influence in the Far East, which in the interwar years was counterbalanced not so much by the Chinese power as by the Japanese expansion on the Asian continent.

The final act of the liquidation of formal ties between Mongolia and China came at the time when the Japanese power in China was destroyed. On October 20, 1945, the population of Outer Mongolia held a plebiscite and decided to claim full independence as the Mongolian People's Republic.⁴²

Another example of the Soviet use of the national self-determination policy was the Soviet position on the question of German reunification. During the Geneva meeting of Foreign Ministers, October 27 to November 17, 1955, Molotov stated that the Soviet Union would not entertain plans for the settlement of the German problem which would jeopardize "social achievements of the workers in the German Democratic Republic."⁴³

Speaking to a rally in East Berlin on his way from Paris in May, 1960 after the abortive summit meeting, Krushchev stated:

"How can the German problem be solved? There are two ways. The one proposed by the Western powers is that of the remilitarization of Germany... But there is another way, a correct way, of settling the German question, a method which the government of the Soviet Union has been and is supporting; this is the unification of Germany as one peace loving democratic state which would not become a menace to other peoples... It is impossible to settle the German question to the detriment of the interests of the German democratic Republic... Can the German Democratic Republic agree to its inclusion in the North Atlantic Pact and the Western European Alliance and to carry on its shoulders the burden of the armaments race? Can the toilers of the German Democratic Republic agree to the liquidation of their political and social achievements and all of the democratic transformations? We are convinced that the toilers of the German Democratic Republic will never agree to enter that road."⁴⁴

In a sense therefore the principle of self-determination justified in the eyes of Soviet government a revision of its international obligations. In the case of Outer Mongolia, the Soviet Union was freed from its treaty obligations to respect Chinese sovereignty. In the case of East Germany, the Soviet Union,

as one of the four occupying powers, was able to evade its obligations relating to the reestablishment of Germany assumed at Potsdam.

In very general terms the principle of self-determination is used in order to prevent, whenever possible, the emergence of a non-Soviet regime or territorial gains by the capitalist countries, provided that interests of the Soviet Union do not require a departure from this principle. Korovin for instance in his early works supported the unification of Austria to Germany at the time when the Soviet Union and Germany were in alliance directed against the Western powers. The principle of self-determination is supported by the Soviet government as a legal formula for the dismantling to the colonial empires of the European countries. On occasion, however, the Soviet Union opposes the application of the self-determination procedures in the processes of decolonization, on the principle that establishment of the native regime in colonial countries is strengthening the third world position and is affecting the balance of power.

In the case of West Irian, which was claimed by Indonesia, the Dutch government proposed that the future of that Dutch colony be decided by a popular referendum under international control. Indonesians rejected this proposal claiming that West Irian was a part of Indonesian territory and that to allow a plebiscite would violate Indonesian sovereignty. The Dutch then suggested submitting the question of Indonesian sovereignty over West Irian to the decision by the International Court of Justice. This proposal was also rejected by Indonesia. In a statement of February 9, 1962, the Soviet government took the position that West Irian's future had been decided on August 17, 1945, when the Indonesian Republic declared its independence, and that West Irian as an integral part of the Republic of Indonesia shared its future. The Soviet Union, therefore, rejected the Dutch government's proposal that the matter be left to the self-determination of the people of West Irian. "Soviet people," a Soviet government declaration stated, "consider it their duty to assist all nations which struggle for the overthrow of the colonial oppression and for the strengthening of national independence."⁴⁵

6. Territorial Provisions in Soviet Treaties and the Principle of Self-Determination

a. Early Treaties

In spite of official avowals of a new course of policy and new principles designed to shape the action of the Soviet government in its external relations with other countries, early Soviet treaties demonstrate little of the new order which the Soviet government declared itself ready to promote. As the new regime became accustomed to the exercise of power, it returned slowly, but inexorably, to the old ways and the well-established techniques used in the settlement of international problems, territorial questions included.

In the Brest-Litovsk Treaty of Peace, March 3, 1918, between Russia and

the Central Powers (Germany, Austria-Hungary, Bulgaria and Turkey) Russia renounced her sovereignty over certain territories.⁴⁶

The Soviet-Estonian Treaty of Peace, February 2, 1920, which served as a model for similar treaties of peace with Lithuania (July 2, 1920) and Latvia (August 11, 1920) contained a Russian recognition of the independence of Estonia. It then proceeded with the determination of the Russo-Estonian frontier. But only the Peace Treaty with Latvia mentioned the express will of the Latvian nation to establish its own state. It may have been assumed that also in the case of the other two Baltic nations, the Soviet Union would accept the political fact that there would be Latvian and Lithuanian states. This was due to the fact that Soviet efforts to reconquer these territories met with resistance. The Finnish Treaty of Peace of October 14, 1920, contained no recognition of Finnish independence from the Russian side. The treaty started from the statement that before the Revolution, Finland had declared itself an independent state and that the war had no connection with this event.

The Polish Treaty of March 8, 1921, contains a reference to the principle of self-determination in a different context. In this treaty Russia and Poland recognized Ukraine and Byelorussia as independent states on the basis of the principle of self-determination. Following the delimitation of the Polish, Russian and the Ukrainian frontiers, both Poland and Russia renounced any claims to the territories East and West of the demarcation lines.

The principle of self-determination is indirectly referred to in connection with the Soviet renunciation of the Tsarist policy of force towards Persia in the treaty with Persia of February 26, 1921. In this treaty Russia returned to Persia the town of Firuze with its district and the use of certain Persian islands in the Caspian Sea, retaining however the possession of the city of Seraks, which was also gained from Persia in the treaty of 1893.

Finally in the treaty with Turkey of March 16, 1921, Russia and Turkey recognized (Article IV) the identity of their aims in the struggle of the peoples of the East for national liberation and the struggle of the toilers of Russia for the establishment of the new social order. They further recognized the right of these nations to freedom and independence and their right to choose such forms of government that would correspond to their wishes. In the final analysis, the self-determination principle, as it was invoked in the early territorial settlements, was synonymous with Russian acceptance of the fact that certain national groups were able to resist her armed efforts to unite them with the Russian state. Successful armed resistance guaranteed their independence.

b. Later Soviet Territorial Agreements

The most important Soviet acquisitions in the post-World War II period were agreed to not with the victim country but with the great powers with which the Soviet Union was allied at the time.

Territorial acquisitions in Poland were the result of the agreements with

Nazi Germany. They were confirmed by the decisions of the Allied leaders in Yalta and Potsdam. The delimitation agreement with Poland of August 16, 1945, took due note of the decision made by the major Allied powers.⁴⁷

Territorial acquisitions in East Prussia (District Königsberg) were the result of the decision of the major Allied powers in Berlin (August 1945).

Southern Sakhalin and the Kurill Islands were awarded to the Soviet Union by the major Allied powers in Yalta (February 11, 1945).

Bilateral treaties in which the Soviet Union acquired territories from other neighboring states were as follows: With Finland, Peace Treaty of March 12, 1940, confirmed by the Armistice Agreement of September 19, 1944, and the Peace Treaty of February 10, 1947.

Northern Bucovina and Bessarabia were acquired from Rumania in the agreement of June 29, 1940,⁴⁸ and confirmed by the peace treaty with Rumania of February 10, 1947.

Carpathian Ukraine was acquired from Czechoslovakia by the treaty of June 29, 1945.⁴⁹

Of these territorial settlements none, except the Soviet-Czechoslovak agreement, had mentioned the self-determination principle although other territorial settlements were also dictated by ethnic principles. The Soviet territorial settlements with Poland and Finland took the form of territorial exchanges, or purchases, and were dictated by the consideration of economic advantages. Good examples of these economic considerations were the Polish case where Polish territory cut across an important railway line in the Soviet territory and in the case of Finland where the Soviet Union sought to acquire a hydroelectric power complex. Territorial acquisitions in East Prussia, in the Far East and in Finland were motivated by security and economic interests. As the chief Soviet delegate to the Paris Peace Conference explained on August 15, 1946:

“Following the October revolution, Finland was given independence and her territory from the hands of the new regime in Russia. Nevertheless, paying little attention to this fact, Finland was unwilling to make territorial concessions and to cede to Russia a part of her territory which was not further than 30 kilometers from Leningrad, thereby exposing this city to the danger of occupation. The Soviet efforts to achieve this by means of exchanges of territory by peaceful means were unsuccessful, and the Soviet Union was forced to resort to arms to force Finland to accept the Soviet demands.”⁵⁰

Acquisitions from Japan (Sakhalin and the Kurill Islands) were obviously in the eyes of the Soviet leaders an act of historical justice, obtained in cooperation with the Western Allies. At the Yalta Conference Britain and the United States agreed that the Soviet Union should join in the war against Japan and that the status of Outer Mongolia (Mongolian People's Republic) should be preserved and that Russian rights violated by the treacherous attack of Japan in 1904 should be restored. Interestingly enough not only was Japan to bear the cost of these restitutions but the Soviet Union was also to

regain possession of Southern Sakhalin, the Kurill Islands, and Dairen. Port Dairen was to be internationalized. Furthermore, Port Arthur was to be leased to the Soviet Union in order to establish a naval base. It was also decided that the Soviet Union would regain its rights in the Chinese Eastern Railway which was to be reorganized as a Soviet-Chinese Mixed Company but managed by the Soviet State. Eventually, after the emergence of the Communist regime in China, the Soviet Union withdrew from Dairen and Port Arthur and ceded its share in the Chinese Eastern Railway to the Chinese state.⁵¹

The review of the Soviet practice in the settlement of territorial questions seems to indicate that the principle of self-determination played a minor role in Soviet territorial solutions. On no occasion had the Soviet Union adhered to the procedure for the expression of a political preference of any population in order to determine the political and social order under which it was to live. The Soviet Union would respect armed resistance which it was unable, or found too costly, to overcome. On at least two occasions (Poland and Finland) the Soviet Union seemed to be prepared to arrange for a total political submersion of their national existence. In the case of the three Baltic republics, the Soviet Union chose to prefer the interests of the entire Soviet Union to those of the Baltic nations, adhering thus to the policy more in the tradition of the imperial regime.

An important place in the Soviet stock of principles governing territorial settlements belongs to the ethnic principle which aimed at establishing clear and well-defined ethnic boundaries. Principles of ethnic delimitation were, however, disregarded if the important economic or security interests of the Soviet Union would dictate a change in the frontier pattern. In the broadest sense, however, the principle of historic rights as a valid reason for territorial claims in international law seems to be paramount in the minds of the Soviet leadership. It may be observed in the ethnic delimitation policy, in the ideas regarding what are the needs of Russia in terms of security, in access to warm water ports, and in the far Eastern territorial expansion at the expense of China and Japan.

D. Soviet Territorial Sea and Inland Waters

1. The Geneva Convention on the Territorial Sea and the Contiguous Zone

The Convention on the Territorial Sea and the Contiguous Zone, signed at Geneva, April 29, 1958, and ratified by the Soviet Union recognized (Article 1) the principle that, "The sovereignty of a state extends beyond its land territory and its internal waters to a belt of sea adjacent to its coast, described as the territorial sea." The term sovereignty is used to describe the nature of national jurisdiction as it extends beyond the dry land. This in turn is extended by analogy with the concept of jurisdiction of a state over its land,

to include the air space, the seabed and its subsoil. However, the convention hastens to add that, "This sovereignty is exercised subject to the provisions of the convention and other rules of international law."

The width of the territorial sea is not defined and is left open for the determination by the states with the proviso that they cannot extend the territorial sea beyond 12 miles. The 12 miles includes a so-called contiguous zone which is basically a part of the open seas but in which the coastal state may exercise control in order to enforce its customs, immigration or the sanitary regulations in force in its territory or its territorial sea.

From the territorial sea, in which members of the international community have rights and claims to other states and particularly to the coastal state, must be distinguished those parts of the body of water linked with the territorial waters and the open sea which constitute the so-called internal waters of a state. These in general international law and, under the Convention, have the status of being an integral part of the state territory. Here belong in particular:

1. The sea which is a part of the territory measured from the straight base lines from which the territorial sea extends.
2. Bays with entrances not exceeding 24 miles.
3. Historic bays which are a part of the national territory without regard to the width of the entrance.
4. Harbors.
5. Mouths of rivers flowing directly into the sea.

2. The Breadth of the Territorial Sea and Inland Waters

Legislation currently in force which determined the width of the territorial sea of the Soviet Union is the Decree on the Protection of the State Frontier, dated August 5, 1960.^{51a} It established the width of the territorial sea at 12 nautical miles from the low water mark on the mainland or Soviet islands. The maritime frontier between the USSR and contiguous states is determined, according to the decree, either by the rules of international law or by international agreements with those states.

As to inland marine waters, the Decree listed as inland waters ports, gulfs, bays, inlets, and estuaries, the coasts of which belong wholly to the USSR, provided that the width of those bodies of water does not exceed 24 nautical miles.

There is a tradition of constant Russian endeavor to claim extensive rights as regards the control of the coastal waters. The ukase of Tsar Alexander I of 1821 established a 110 mile zone, reserving fishing rights to Russian subjects.

When confronted with British and American protests regarding this claim, it was withdrawn. Later the Russian imperial government became more inclined to recognize the principle that territorial waters proper extend to the 3-mile limit, and the 1892 law on Customs set the principle (Ar-

ticle 283) that the customs frontier is set at a distance of 3 miles from the Russian coast. This distance was later extended to 12 miles by the law of December 11, 1909 – also for the purpose of customs control. A later law of May 29, 1911, on the fisheries in the Pri-Amur government region, extended the territorial seas of Russia to 12 miles; the same principle was adopted in the General Law on Fisheries adopted in May 1913.⁵²

The Soviet Union followed the principle of the 12-mile limit and some of the Soviet writers were convinced⁵³ that rights of the Soviet Union to the 12-mile limit were already established under the imperial regime and were a part of the territorial succession of the Soviet state. The first decree which set the 12-mile zone was the decree of June 24, 1921, on the protection of fisheries in the Arctic Ocean and in the White Sea. In a general manner the 12-mile principle was applied in the Decree of June 15, 1927, on the protection of the State Frontier of the USSR and confirmed in the law on the Protection of the USSR State Frontier of August 5, 1960.

As regards bays, gulfs, inlets and estuaries, the principle of the 24-mile width of the entrance was established for the first time in the decree of August 5, 1960.

3. Historic Inland Waters

In addition to the 12-mile territorial sea and inland waters with the entries not exceeding 24 nautical miles, the 1960 decree claims as Soviet inland waters those bodies of water, gulfs, bays, inlets and estuaries, which historically belonged to Russia, irrespective of the width of the entry. The White Sea and the Sea of Azov were declared to be in this category. The most recent addition to these inland waters of the Soviet Union was the Bay of Peter the Great. The Bay of Vladivostok which issues onto the Sea of Japan has a width of entrance at the demarcation line drawn between the mouth of the Tumen Ula River and Cape Povorotny of 108 miles. The statement of the Council of Ministers of the USSR⁵⁴ had the form of a declaration which dealt with the base line from which the width of the territorial waters extending seaward was to be calculated without referring to the historical rights of Russia in this area. This announcement met with protests from the United States, Britain and Japan. The Soviet reply to Japan explained that:

“The waters of Peter the Great Bay are historically the waters of the Soviet Union by virtue of the particular geographical conditions of this bay and its particular economic and defense significance. Russia’s historical rights to Peter the Great Bay were secured in the Rules of Maritime Fishing in the territorial waters of the Amur Region General Government issued by the Russian government in 1901.”

According to the Soviet note the historical rights of Russia in the Peter the Great Bay were recognized by the Chinese People’s Republic and also in international agreements with other powers:

“The fishing Conventions concluded between Russia and Japan in 1928,

and the 1944 Soviet Japanese Protocol extending the 1928 Convention for a 5-year period were all based on the fact that Peter the Great Bay belonged to the Soviet Union. Under the terms of these agreements Japanese subjects and other aliens were forbidden to fish in a large area of the above Bay and in the 1944 protocol this prohibition was extended to the entire Bay . . . The recent increase in entries of foreign fishing ships in the waters of the Great Bay and of flights of foreign aircraft over these waters have impelled the Soviet government to reassert that the Bay belongs to the Soviet Union and also to reiterate the boundaries of Soviet domestic waters in the Bay area.”⁵⁵

This action of the Soviet government preceded the adoption of the Geneva Convention. This convention, on the whole, justified the Soviet position as regards the definition of its concept of historic bays and gulfs, viz that they are not controlled by general provisions concerning the width of entrance or any other rule applicable to nonhistoric bays and gulfs. As the question of the recognition of the Soviet rights in the Peter the Great Bay area met with protests, the question of recognition may still be regarded as open.

Soviet legal science lists a number of other bays and gulfs as inland Soviet waters. The Bay of Riga is considered a Soviet territory due to the provisions of the Treaty of Nystadt. In the Far East the list of historic gulfs included the following “Seas”: Karskoe, Laptievich, East Siberian and Chukhotskoe.⁵⁶

4. Regime of Territorial Seas and Inland Waters

a. Navigation

There is a considerable difference in the regime of territorial seas and inland waters, one of the most important being the extent of the control of navigation in these two kinds of marine waters.

Under the regime of the 1958 convention, ships of other countries have the right of innocent passage through the coastal waters (territorial seas). The coastal state may regulate navigation in its territorial waters during this passage. Unless the rules of navigation are violated foreign ships are not subject to the jurisdiction of the coastal state except for purposes directly connected with their presence in territorial waters. At any rate a coastal state should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in respect of a person on board that ship. The coastal state, however, may without discrimination among foreign ships suspend temporarily in the specific areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of the security of the coastal state.

Navigation in inland waters is not regulated by the rules of international law and is exclusively under the jurisdiction of the coastal state, in the same manner as any other part of its territory.

Extensive provisions of the Decree of August 30, 1960, on the Protection of the State Borders of the USSR, repeat on the whole the rules of the 1958

Convention. Peaceful passage of nonmilitary vessels through the territorial waters of the USSR is permitted for the purpose of crossing them without entering inland waters, or for the purpose of entering inland marine waters or emerging from them onto the high seas. Passage is considered innocent if the vessel follows the usual course of navigation or a course recommended by competent agencies and observes the established regulations without entering areas which have been previously announced as closed to navigation.

The rule of innocent passage does not apply to the inland maritime waters. The announcement of the incorporation of the Peter the Great Bay into the Soviet Union contained the following statement:

“Navigation by foreign ships and planes in the area of Peter the Great Bay can take place only with the permission of the competent USSR authorities except for foreign ships arriving and departing from the open port of Nakhodka. Foreign ships navigating in and out of the open port of Nakhodka must follow the routes announced to the navigators.”⁵⁷

The text of the 1958 Convention makes no distinction between a merchant ship and a man of war regarding the rule as to innocent passage through the territorial waters. Both categories are under the same set of rules as regards navigation with the specific proviso that submarines are required to navigate on the surface and to show their flag. All categories of ships require permission to enter inland waters.

According to the decree of 1960 (Article 16) “Foreign naval vessels pass through the territorial waters of the USSR and enter its inland maritime waters only with the advance permission from the USSR government and under the procedure established by the regulations for visits by foreign naval vessels to the territorial and inland marine waters of the USSR . . .”

The text of Article 16 may be interpreted as requiring permission for the presence of foreign naval vessels even in case of simple passage through the territorial waters, which would be contrary to the provisions of the convention.

Information regarding conditions of navigation in territorial and inland waters, including lists of open ports, harbors and roadsteads open to foreign vessels, are published in the *Marine Notices*.⁵⁸

b. *Fishing and Other Rights of Foreign Nationals in Soviet Territorial Waters*

According to the 1958 Convention the coastal state has exclusive right to exploit marine and other resources of its territorial and inland waters. The provisions of the Convention, however, do not derogate specific rights existing under separate international treaties and agreements. Fishing and all other forms of exploiting sea resources are prohibited in the coastal waters of the Soviet Union. According to the Decree on Reproduction and Protection of Fishing Reserves of 1958, all coastal waters constitute the economic reserves of the USSR.⁵⁹

The exclusive right to fish and control marine life resources within the 12-mile zone was challenged by a number of states. The end result was that a

system was worked out which constituted a compromise between the claims of various other states and those of the Soviet Union. No such claims were ever raised in relation to Soviet inland waters.

Prior to World War I and also after the emergence of the Soviet regime in Russia, British fishermen continued to fish outside the three-mile limit but within the 12-mile limit of the Russian coast. In 1921 the Decree of the Council of People's Commissars reserved the exclusive fishing rights within the 12-mile zone to Soviet nationals. This decree was communicated to the British government which rejected Russian claims suggesting at the same time negotiations to conclude a convention for the protection of maritime resources.⁶⁰ As the Soviet government was reluctant to agree to such negotiations, British fishermen continued to fish outside the 3-mile zone but within the 12-mile zone.

On January 31, 1922, a British trawler "Magnet" was detained by the Soviets within 9 miles of the Russian coast in the Murmansk area. Subsequently the vessel was lost, owing to the storm which developed during the following night. While expressing regret at what had happened to the trawler, Soviet authorities protested against the violation of the Soviet territorial waters.⁶¹ On March 3, 1922, Soviet authorities detained another British trawler, "Hubert," and brought it to the port of Murmansk. The capture of the "Magnet" and the "Hubert" was followed by the arrest and bringing to the port of Murmansk the fishing vessel "James Johnson" which was caught on March 31, 1923, within 4 miles of the Russian coast.⁶²

Soviet actions to dislodge British fishing interests from the long-established practice of fishing off the Russian coast in the North resulted in a long exchange of notes between the two governments. The Soviet argument that extension of the exclusive fishing zone to a distance of 12 miles was aimed at the protection of its fishing resources was met by a proposal to work out a system by which both governments would assure that protection by common action. The Soviet effort to expand its control of the territorial waters coincided with a general deterioration in Anglo-Soviet relations at a point in time when Russia sought to improve its economic relations with England. When the British on May 7, 1923, confronted the Soviet government with an ultimatum threatening to break off diplomatic relations, the Soviet government changed its position and recognized British rights to fishing outside the 3-mile limit and within the 12-mile zone of the Russian coast. It paid compensation, in addition to releasing the vessels which had been detained, and it declared further that it would desist from the practice of harassing British fishing vessels.⁶³

Similar action was taken in relation to the fishing fleets of Norway. Here again, Norway was unable to accept Soviet claims to the exclusive fishing rights within 12 miles from their coasts in the White Sea and the Arctic Ocean. On June 22, 1922, in an exchange of notes between the two governments it was agreed that the detained Norwegian vessels would be released and that in the course of the following two months the Soviet government

would desist from the practice of arresting Norwegian fishing vessels. In exchange the Norwegian government agreed to instruct its fishing interests not to fish in the Soviet 12-mile zone and thus the whole matter would be amicably resolved.⁶⁴ Eventually the matter was settled by a Soviet fishing concession granted to the fishing industries of Norway.⁶⁵ Finally, the Soviet-Norwegian Trade and Navigation Agreement of December 15, 1925 provided in Article 31 that Norwegian ships would enjoy, as regards hunting sea animals in the White Sea and in the territorial waters of the Arctic Ocean, the regime of the most privileged nation and would have rights equal to those assigned to any other country on the basis of the agreement.⁶⁶

In the Far East a similar effort to extend the territorial waters of the Soviet Union to the 12-mile limit and at the same time to reserve exclusive fishing rights to Russian nationals was made in the note of July 25, 1925, of the Soviet Ministry of Foreign Affairs to the Japanese Embassy in the SSR. The Soviet Union claimed that the 12-mile zone extended in the sea of Okhotsk, Gulf of Tartars, Japanese Sea, and in the Pacific Ocean on the Eastern Coast of Sakhalin.⁶⁷ However, in the end the Soviet Union was unable to maintain its position; and in a Convention on Fisheries with Japan on January 23, 1928, the Soviet government granted to Japanese citizens the right to "fish along the coast line of the USSR in the Japanese, Okhotsk, and Bering Seas, with the exception of rivers and bays."⁶⁸

The only country which had lodged no protest against the decision to extend Soviet territorial waters to the 12-mile limit was Germany. Informed of the Soviet legislation in this question (Soviet note of June 14, 1926) the German embassy indicated that the question of the territorial waters was under the study of the committee of jurists of the League of Nations and that German government would decide upon its position in the matter after the group had prepared its report.⁶⁹

As regards the rights of Finland, the terms of the peace treaty of October 14, 1920 (Article 3) mutually established a 4-mile limit for the territorial waters of each contracting party, except for certain islands. Here a time limit was set for the termination of the 3-mile rule.⁷⁰

At the heart of the entire system of concessions and departures from the 12-mile principle in the Soviet territorial waters were the Soviet-British fishery agreements. The temporary agreement of May 22, 1930,⁷¹ was subsequently replaced by the Fisheries Agreement of May 25, 1956,⁷² in which the Soviet government conceded to the British the rights "to fishing boats registered at the ports of the United Kingdom, to fish in the waters of the Barents Sea, along the coast of Kola Peninsula . . . up to a distance of three sea miles from low water mark both on the mainland and on the islands . . ."

Simultaneously with the signing of the agreement, the British government addressed a note to the Soviet government in which it stated that it was "the understanding of the government of the United Kingdom that nothing in this agreement shall be deemed to prejudice the claims or views of either

Contracting Government in regard to the limits of territorial waters.”

The 1956 agreement with Britain was denounced by the USSR on March 12, 1961, and was not renewed. Finland concluded an agreement with the Soviet Union on February 21, 1959, and Norway secured some fishing and hunting privileges.⁷³ The recent treatment of the British fishing rights in the Northern Sea seems to indicate a design to eliminate British rights altogether.

By contrast, the Soviet Union seems to adhere to the policy of respecting the rights of its neighbors in this area. For example, on May 20, 1965, not only was the 1959 treaty with Finland extended, but the protocol signed on that date changed to Finnish advantage the delimitation of the Soviet and Finnish fishing zones in accordance with the rules as set in the 1958 Geneva Convention on Territorial Seas to which both countries adhered.

According to the Bank of Finland Monthly Bulletin (June 1965) the new boundary would open substantial new areas for Finnish fishermen to fish within a considerable portion of Soviet territorial waters east of Suurjaari.

c. The Right of Innocent Passage

In practice the Soviet government drew a distinction between the right of innocent passage which it accorded to merchant vessels and the treatment accorded to warships of other countries. The Soviet position seems to be that, unless agreed by the Soviet Union, warships of other countries are excluded from Soviet territorial waters.

In 1924 an American naval vessel visited Emma Bay in the Arctic Ocean on several occasions and erected a geodetic station in what the Soviet Union considered to be a Soviet territory. At this time the sector doctrine was not yet generally accepted. The Soviet foreign commissar protested and in the note of December 5, 1924, communicated to the Secretary of State, emphasized:

“... first of all, the fact that a United States man of war has several times visited the territorial waters of the USSR without consent of the latter, which is contrary to international law. I must call attention to the fact that the erection of such a station (geodetic survey) . . . is a gross violation of the sovereignty of the Soviet republics.”⁷⁴

Violations of the policy that naval craft had to obtain express permission to pass through territorial waters, to enter Soviet ports or to undertake any kind of action within the territorial waters of the Soviet Union were the subject of numerous complaints and protests by the Soviet government to foreign governments. A considerable portion of these complaints resulted because the Soviet government sought to extend its control outside the 3-mile limit. In a number of cases, however, foreign naval vessels were found to be within the 3-mile limit.

On January 31, 1924, the Soviet government protested against the entry of U.S. Naval vessels in the bays and gulfs of Kamchatka.⁷⁵ The Soviet note to the Norwegian government of April 23, 1923, in connection with the

presence of a Norwegian auxiliary cruiser in the White Sea, stated that its presence was a violation of the rights of Russia.⁷⁶ During the tense period in British-Russian relations the threat that the British government would be forced to dispatch a naval vessel to offer protection to British fishing craft evoked a protest in strongest terms from the Soviet Union,⁷⁷ implying that the use of force would be in order to prevent any interference with the Soviet police action.

Soviet-Japanese relations in the Far East regarding fishing rights in the adjacent seas prior to their regulation by the 1928 agreement offered the Soviet government frequent opportunities for the assertion that units of the Japanese navy required express permission for their presence in territorial waters of Russia. On numerous occasions, however, the Soviet authorities, acting to enforce the policy of a 12-mile territorial waters zone, conflicted with the exercise of the fishing rights which, according to the Japanese government, were on the high seas. On occasion Japanese naval craft, using their superior strength, intervened and released Japanese fishing vessels that had been arrested and brought to Soviet ports.⁷⁸

On two occasions recently the Soviet Union reasserted its position as regards the right to control the passage of the naval vessels through its territorial waters. In 1965 and 1967 American Coast Guard ice breakers attempted to effect passage through the Northern Sea route. On both occasions the passage through the Vilkitskii Straits was claimed by the Soviet Union as being within the Soviet territorial seas. The Vilkitskii Straits between the Russian mainland and Severnaya Zemla are 22 miles wide and under the 12-mile rule constituting Soviet territorial sea. At issue was the right of innocent passage of the naval vessels (the icebreakers were armed), which in terms of the convention was free and indeed permitted under previous authorization according to the Decree of 1960.⁷⁹

5. *Jurisdiction*

a. *Administrative*

Naval and merchant craft while present in Soviet territorial waters are subject to the administrative regime in force. It includes port, custom, sanitary and other rules, including those established for navigation. Foreign vessels are prohibited from conducting hydrographic work and research in coastal waters. Upon the request of the coastal authorities, non-naval vessels must show their flags, follow navigational instruction, and submit to inspection if they are found to be in violation of the navigation rules or seem to be in distress. Non-naval craft in Soviet territorial waters may be detained and brought to port for violation of the rules of navigation; violation of the rules for the protection of marine resources; intentional damaging of cables, markers and other objects that are the property of the Soviet Union; and violation of rules as regards the loading and unloading of cargo, e.g., outside the port installations.

b. *Criminal*

Under the criminal law in force in the Soviet Union, criminal provisions apply to all persons on the territory of the USSR, including territorial waters. Theoretically Soviet criminal law, and consequently jurisdiction of Soviet criminal courts, extend to all crimes committed on board ships passing through the territorial waters. However, the specific provision of the decree of May 42, 1927, limits the right of Soviet coastal authorities to make arrests in connection with crimes committed on board merchant ships to those cases when crimes were committed partly or wholly on the shore or when the consequences of these crimes could engender serious complications on shore.⁸⁰ In addition, the Soviet Union has the right to arrest a Soviet citizen involved in a crime committed on board ship under the general rule of Soviet judicial jurisdiction in criminal cases involving Soviet citizens. Foreign non-naval craft may be detained for unseaworthiness and for the removal of criminals found on board such foreign vessels, but not in the case where the vessel is passing through Soviet territorial waters the alleged crime was itself not committed in Soviet territorial waters and the ship was proceeding from a foreign port to a foreign port.

c. *Civil*

Civil legislation extends to all transactions and legal acts performed on board a ship, under general provisions of rules of private international law. This in particular applies to those situations where a Soviet citizen is bound by the provisions of the Soviet civil law, irrespective of the place of residence at home or abroad.⁸¹

6. *Hot Pursuit*

The speed of modern vessels and the need to control violations of the interests of the coastal state have resulted in the right of the so-called hot pursuit, subject to certain limitations. Under Article 23 of the Convention on High Seas (Geneva 1958):

Hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal state have good reason to believe that the ship has violated the laws and regulations of that state. Such pursuit must be commenced when the foreign ship or one of its boats is within the territorial waters or the territorial sea or the contiguous zone of the pursuing state and may be continued outside the territorial sea or the contiguous zone only if the pursuit has not been interrupted. When the foreign ship within the territorial sea or the contiguous zone receives the order to stop, it is unnecessary for the ship giving the order to be also within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in Article 24 of the convention, pursuit may be undertaken only if there has been a violation of the rights for which the zone was established.

The provisions of Article 23 of the Convention also establish rules which

have the purpose of assuring that the right of hot pursuit is not abused. There must be certainty that the boat or ship pursued is within the territorial waters or contiguous zone and that a visual contact has been established between the pursuing ship and the ship pursued.

The provisions of the Convention accord with earlier Soviet practice. Article 27 of the Statute on Protection of State Boundaries of the Union of SSR of 1927 provides that:

"The pursuit of a vessel which has not complied with the orders of the coast guard within territorial waters . . . may be continued beyond these waters on the high seas, but in any case must be suspended when the pursued vessel enters the waters of a foreign state and must cease completely when the (pursued) vessel flying a foreign flag enters a foreign port."⁸²

The decree of the Presidium of the USSR Supreme Soviet of 1960 has incorporated the provisions of the 1958 Geneva Convention into the Soviet legal system. Thus Soviet frontier guards have the right to:

"Pursue and detain a vessel that has violated the state border of the USSR. If the pursuit has begun in the territorial waters or inland marine waters of the USSR and is carried out without interruption, the border forces have the right to continue it on the high seas until the vessel enters its own or foreign territorial waters."

7. Soviet Legal Regime of Territorial Waters and International Law

Soviet regime of the territorial waters at present falls short in two areas in terms of the general international standards exemplified by the 1958 Geneva Convention on Territorial Waters and the Contiguous Zone.

In the first place the Soviet regime introduced serious restrictions as regards the innocent passage of naval vessels. Under the 1960 Decree on the Protection of the State Frontier, foreign naval vessels could navigate through Soviet territorial waters only upon obtaining, through diplomatic channels, a proper authorization. While passing through territorial waters, they may not conduct soundings, surveys, take photographs, make drawings or sketches, or otherwise engage in activities that are not a part of normal navigation. In the original draft of the Convention, Article 24 provided for the requirement of such authorization. It was deleted by the diplomatic conference, and the Soviet Union entered a proper reservation to Article 23 which set out conditions for the demand made by a coastal state to a naval vessel of another country to leave its territorial waters. The usual interpretation would suggest that innocent passage of naval vessels is permitted as a matter of course by the Convention and general international law.

The other question is the question of the breadth of the territorial waters. It seems to be incontrovertible, that the present international law permits the establishment of a zone (territorial waters, territorial sea, contiguous zone and territorial sea), over which the contiguous state exercises jurisdiction and controlling functions in order to safeguard its interests. However, such

controls and jurisdiction must not interfere with already existing and internationally guaranteed rights of other states. A long list of agreements with Britain, Norway, Germany (economic treaty of 1925) and Japan has confirmed this position. The Soviet Union was forced to recognize the right of the nationals of other states to fish within the 12-mile zone but outside the 3-mile zone. In more recent times Soviet Union seems to have returned to its earlier policy of excluding foreign fishing craft from the 12-mile territorial waters zone. The 1956 Fisheries Convention with Britain was denounced and the Soviet-Japanese Convention of 1956 had accepted the Soviet viewpoint as regards Soviet fishing rights in the zone exceeding the 3-mile zone of the territorial waters. This seems to indicate that the reality of such rights is materially affected by power relationships which, since World War II, has changed dramatically in favor of the USSR, making it impossible for the other countries to enforce their rights either diplomatically or by the use of force. It may be presumed, therefore, that in the final analysis a slow erosion of fishing rights claimed by Britain, Norway and other countries will remove the restrictions upon Soviet jurisdiction in its territorial waters.

E. *Airspace*

1. *Soviet Law of the Air: Treaties and Domestic Legislation*

In the early years when aviation problems were increasingly becoming an issue of practical politics, scholars and experts were busy inventing ingenious schemes to accommodate the unhindered communication through airspace. The airplane was rightly considered to be the most international of all the means of transport. None of these proposals became law and from the beginning governments asserted full sovereignty over the national airspace.

Soviet internal legislation and provisions of international treaties to which the Soviet Union is a party follow the principle that sovereignty of the state extends over the airspace above its territory. This practice was established during World War I and received recognition in Article 1 of the Warsaw International Convention for the Regulation of Air Navigation (1929). "The High Contracting Parties recognize that every power has complete and exclusive sovereignty over the airspace above its territory." The same provision was incorporated into Article 1 of the International Convention of Civil Aviation of 1961 (The Chicago Convention), The Soviet Union was a party to the Warsaw Convention but was not a party to the one adopted at Chicago.

The Soviet Code of the Air of 1935⁸³ provided in Section I that: "To the Union of Soviet Socialist Republics belongs full and exclusive sovereignty over the airspace of the USSR.

The Airspace of the Union of SSR includes the airspace over the dry land

and territorial waters of the USSR, or the coastal waters established by the Soviet legislation.”

Earlier Soviet legislation contained no statement concerning the issue of sovereignty. However, the Soviet Union claimed all powers over the Soviet airspace which would be a consequence of the full sovereign control of Soviet airspace, including regulation of the flight of foreign aircraft over Soviet territory. Indeed, the Soviet Union reserved for itself the right to prohibit the admission of foreign aircraft, either generally or to certain specific areas.

The 1935 Aircode was replaced by the 1961 Code of the Air. The 1935 Code of the Air incorporated into Soviet municipal law the air law of the Warsaw Convention. The 1961 Code introduced regulations which were agreed at the Hague Conference on Private International Law of the Air (1955).⁸⁴ Article I of the 1961 Code repeats the provisions of the 1935 Code.

Finally, the 1960 Decree of the Presidium of the USSR Supreme Soviet on the Protection of the State Border of the USSR stated in Article I, that:

“The state border of the USSR is a line defining the limits of the land and water territory of the USSR. A vertical plane running along this line is the boundary of the airspace and underneath of the USSR.”

The airspace over which the Soviet Union exercises sovereign rights extends over the coastal waters to the 12-mile limit. However, while foreign nonnaval ships are accorded the right of innocent passage through territorial waters of the Soviet Union, there is no such provision in the Soviet legislation as regards the flight of airships over the coastal waters of the Soviet Union, and on many occasions Soviet border protection forces have shot down foreign aircraft which flew over the territorial waters of the Soviet Union.⁸⁵ According to Article 14 of the 1960 regulations on protection of USSR state borders:

“... aircraft of all types cross the border at specific places (air gates). All aircraft are permitted to take off from the territory of the USSR or to land after crossing the border on a flight into the USSR only at airfields where there are control points. Any other procedure for the flight and landing or aircraft is permitted only on special authorization by competent authorities.”

The Soviet Union is a party to more than twenty air conventions concluded with various countries providing rules for the regulation of air traffic between the Soviet Union and those foreign countries.⁸⁶ At the present time there is regular air communication between the Soviet Union and some twenty countries, including all members of the Socialist camp. These conventions usually provide that “The aircraft and their personnel shall be subject to the laws and regulations of the state over those territory they are flying.”

2. *Exclusive Jurisdiction: Intrusion Incidents*

Soviet meaning of the principle of exclusive jurisdiction over the Soviet airspace may be seen in various protests lodged in connection with the violation of Soviet borders and intrusion of foreign aircraft into the Soviet airspace. Numerous incidents occurred both along the southern borders of the USSR, in the Far East and in the Baltic Sea. On all occasions the Soviet Union rejected the explanations that would suggest that some of the intrusions were the result of navigational error; moreover, and in some instances American planes were destroyed while still outside Soviet airspace.⁸⁷

Similar Soviet protests were voiced when weather balloons were launched by the United States Air Force.

On January 8, 1956, the Department of Defense announced that it had decided to extend to the Northern Hemisphere its meteorological survey by means of large plastic balloons carrying automatic equipment designed to gather and relay certain weather data at high altitudes.⁸⁸ On February 4, 1956, the Soviet Union informed the U.S. Government that it had seized a number of these balloons together with their cargo which included aerial photographic equipment, transmitters, etc. In addition, the Soviet Union complained that an American organization had continued to send over the territory of Eastern European states, East Germany, and the USSR a large number of balloons carrying leaflets hostile to the Soviet Union and other socialist states of Eastern Europe. As the Soviet Government stated in its note:

"The release into the airspace of the Soviet Union of balloons with the cargos mentioned above which are carried out by American military organizations represents a crude violation of the airspace of the Soviet Union and a violation of the general accepted principle of international law in accordance with which each state has full and exclusive sovereignty in regard to the airspace over its territory.

"In accordance with this principle of the sovereignty of states over their airspace, the flight of any form of flying apparatus into the airspace can take place only with the permission of the state in question. In view of the foregoing, the above-mentioned activities of the American military organizations represent violations of the territorial integrity of the USSR . . ."⁸⁹

In its reply the U.S. Government explained that this type of activity represented no effort to violate Soviet territorial integrity but was in reality a scientific inquiry and that the gathered data was in any event made public. Furthermore, this activity was publicized beforehand, and the balloons themselves carried information in various languages which explained the purpose of the balloons and pamphlets in Russian, giving the address of the place where the equipment should be returned in case it should land on Russian territory.⁹⁰

For some time thereafter further balloon launchings produced no complications until on September 3, 1958, the Soviet government again protested

against the balloon flights. It reiterated that these flights "represented a crude violation of international law rule according to which each state has a full and exclusive sovereignty in relation to the aerial space above its territory."⁹¹

In its note of September 5, 1958, the U.S. Government confirmed that some of the balloons were lost and that it presumed the balloons which were recovered on Soviet territory to be those balloons. The United States, moreover, drew Soviet attention to the fact that this operation was in no way clandestine, was scientific in nature and that its results were published. Balloon equipment was clearly marked and a request was included to communicate with the research center and to transmit to it the recovered equipment, and the United States repeated this request to the Soviet government to dispatch the equipment for processing and publication of results.

American explanations were rejected and at the press conference equipment allegedly carried by the balloons was displayed, while an expert explained its use as serving to gather military and defense data.⁹²

3. Regime of International Flights in the Soviet Union

Although it was the aim of the Code of 1961 to incorporate, with as little change as possible, the provisions of the Warsaw Convention as amended by the Hague Protocol of 1955, there were, nevertheless, differences between the scope or application of the rules governing international transport in the convention and those in the code. The Convention applied to international flights originating and terminating in the territories of the signatory countries, even in cases when the flight plans included a stop in the territory of a non-signatory country. In those cases apply unified rules contained in the Convention and incorporated in Chapter VIII. According to Article 120 of the Code of the Air:

"The provisions of the Present Chapter apply to all international air transport of passengers, luggage and goods on board the civil airships of the USSR . . . unless the Soviet Union has international agreements to the contrary.

The international transport of mail is effected in accordance with the provisions of international mail agreements entered into by the Soviet Union."

Detailed regulations concerning the enforcement of the Air Code of 1961 are issued by the Administration of the Civil Air Fleet and the Council of Ministers of the USSR.⁹³

According to Article 70, Soviet rules of navigation and exploitation of aircraft apply to all aircraft irrespective of registry, when the flight takes place in the Soviet airspace. Similarly, Soviet customs, passports, currency control, sanitary and other regulations concerning arrivals and departures and the import and export of goods apply to all domestic and foreign aircraft. A foreign aircraft in flight from or to the Soviet territory is obliged

to land at a designated airport in order to undergo customs and passport control.⁹⁴

According to Article 79 of the Code, documents on board foreign aircraft are to be considered valid on Soviet territory if they correspond to the regulations of the country of registry.

F. *Soviet Frontier Regime*

1. *Soviet Frontier Legislation*

The first full law dealing with the frontier regime in the Soviet Union was enacted in 1927. It was replaced in 1960 by the Decree of the Presidium of the Supreme Soviet of the USSR on the Protection of the State Border of the Union of Soviet Socialist Republics.⁹⁵

The state border is the responsibility of the federal authorities. In order to protect the state frontier, the Council of Ministers or, on its instructions, authorities of the Union or an autonomous republic may establish a border zone which should not exceed two kilometers in width and may include all types of territory, land, territorial sea, rivers and lakes. In this border area the Soviet frontier authorities and border protection troops may establish a special regime with additional restrictions. Moreover competent agencies may deny access or right of anchorage as well as the exercise of maritime industry in certain areas of maritime territory or inland waters. Such restrictions must be published in the Official Journal of the Ministry of Merchant Shipping. One of the direct effects of the border zone regime is that movement of persons through the border area and their residence in this area are subject to special regulations and permits issued by the frontier authorities.

By agreement between the Soviet Union and neighboring countries a simplified regime may be established for Soviet and foreign citizens of these states in crossing frontiers. Otherwise, crossing of persons, custom formalities, clearing of goods, diplomatic mail, etc., may take place at special crossing points only.

The enforcement of frontier regulations agreed to between the Soviet Union and neighboring countries is the responsibility of the frontier commissions consisting of foreign and Soviet representatives delegated by the Soviet border authorities.

An important set of provisions are contained in Article 26 of the Border Regulations which state that:

"The following are considered violators of the state border or the USSR:

(a) Persons who walk (ride, fly) across the state border or who attempt to cross it elsewhere than at the points specified for border crossing, or who cross it at a specific point but in an illegal manner;

(b) Persons found in the territorial or inland marine waters of the USSR

or in the Soviet part of the waters of border rivers and lakes, with means of navigation or swimming, if they have entered these waters illegally or are trying illegally to leave their confines;

(c) Foreign military and nonmilitary vessels entering territorial or inland marine waters of the USSR or the Soviet part of the waters of border rivers and lakes in violation of the established rules for entry;

(d) Aircraft crossing the airspace border of the USSR if they lack permission from competent Soviet authorities for a flight across the border and over the land or water territory of the USSR, or aircraft having such permission but flying across the border in a nonspecified place or violating the flight altitude."

Persons who violate or attempt to violate Soviet borders and also persons who send or attempt to violate import and export regulations as regards currency, securities, goods and materials are subject to detention and prosecution.

Within the limits of the territorial and inland marine waters of the USSR as well as in the Soviet part of border rivers and lakes, the border protection troops (ships and other vessels) have the right to request a vessel to show its flag and to ascertain the purposes of the call. They may moreover request a change in course if the vessel is headed towards an area permanently or temporarily closed to navigation. They also have the right to stop and inspect a ship if it is in a prohibited area, is moving outside of a specified channel or recommended route in the territorial or inland marine waters of the USSR; or in a Soviet part of waters, a border river or lake, is riding at anchor, makes no reply to signals, or fails to observe procedures prescribed for navigation in Soviet waters. Non-naval vessels found in territorial marine waters or inland marine waters either engaged in activities contrary to the Soviet regulations or instructions of the border authorities may be arrested and detained.

Violations of regulations regarding the crossing of the Soviet border are subject to special provisions of the Soviet Criminal Code. Under the RSFSR Criminal Code of 1960, exit abroad, entry into the USSR, or crossing the border without the requisite passport or the permission of the proper authorities is punished by deprivation of freedom from one to three years.

2. International Agreements on Border Regimes

The first years of Soviet relations with the neighboring countries had seen a good deal of unrest in the frontier areas. This was due mainly to the activities of armed bands, units of the counter-revolutionary forces based on the territory of the Soviet Union or in the neighboring countries, and general political opposition to the emergence of the new regime. In addition, frontier protection forces and security troops hardly ever respected international frontiers in their actions against bandits or insurgents, meeting with counter-reprisals and retaliation. On occasion the Soviet Commissariat for Foreign

Affairs advanced the doctrine of hot pursuit involving action in the territory of the neighboring state.⁹⁶

In this climate the idea of cooperation to maintain peace and safety in the border areas was born. This idea led to frontier regime agreements, which in due course became a permanent feature of Soviet relations with neighboring countries. One of the first treaties of this type was the frontier convention of June 1, 1921, with Poland on the settlement of the border disputes.⁹⁷ It was later replaced on August 3, 1925, with a detailed set of provisions.⁹⁸ After World War II old conventions with Poland were replaced by two agreements negotiated on July 8, 1948: a treaty on the border regime⁹⁹ and a convention on settling border disputes and incidents.¹⁰⁰ These agreements were replaced by a new frontier convention with Poland concluded on February 15, 1961.¹⁰¹

The regime of the Soviet-Finnish border took some time to develop. The agreement of March 21, 1922, charged the so-called Mixed Russian-Finnish Commission with settling border problems. On November 17, 1928, the Soviet Union and Finland, by exchange of notes, agreed to establish border commissioners on the Karelian Isthmus.¹⁰² On June 19, 1948, the Soviet Union signed a Convention Concerning Procedure for Settling Border Disputes and Incidents with Finland. This was followed by the treaty concerning the regime on the state border of December 9, 1948.¹⁰³

On November 20, 1923, the Soviet Union entered into an agreement on Regulations to Prevent and Settle Conflicts along the Dniester River.¹⁰⁴ After the war with new frontiers in existence, a new border regime treaty with Rumania was negotiated on November 25, 1949 together with a Convention on Procedure for Settling Border Disputes and Incidents.¹⁰⁵ This regime was replaced by the new convention of February 27, 1961.¹⁰⁶

A Convention of July 15, 1937 replaced a number of temporary agreements for the settlement of border disputes between Turkey and the Soviet Union. The Convention moreover provided for the proper appointment of border commissioners.¹⁰⁷ After World War II the Soviet Union gained a common frontier with Norway and on December 29, 1949, concluded a treaty on the border regime and also procedures for settling border disputes with Norway.¹⁰⁸

The border agreements with Persia have a long history. Indeed some elements of the border regime as it came into being were in existence for a long time. However, a formal treaty on the regime of the border and settlement of border disputes was concluded only as late as May 14, 1957.¹⁰⁹ Other important border regime treaties were concluded following World War II in connection with the general shift of the Soviet frontiers westward. On February 24, 1950, the Soviet Union concluded a Border Regime Treaty and a convention concerning procedure for settling border disputes with Hungary.¹¹⁰ A similar treaty, which also incorporated provisions for settling border disputes and incidents, was concluded on November 30, 1956, with Czechoslovakia.¹¹¹ On October 14, 1957, the Soviet Union also con-

cluded a convention with the Korean People's Democratic Republic concerning regulation of border questions.¹¹²

One of the most elaborate agreements of this type is the January 18, 1948 frontier regime treaty with Afghanistan.¹¹³ In addition to the usual provisions dealing with the regime of the frontier, resolution of incidents and the powers of the frontier commissioners, the treaty contains a neat catalogue of rules dealing with the determination of the frontier line along the rivers, changes in the course of the rivers and its effect upon the state frontier, etc.

3. Procedures Established by the Border Regime Agreements

The purpose of the Border Regime Treaties and conventions for settling border disputes was to establish uniform regimes on both sides of the Soviet frontiers with other countries. Procedures were provided for the following matters: the preservation of frontier markers, periodic joint inspection of the state of frontiers and use and maintenance of roads and railways crossing and recrossing the frontier lines, regulation of hunting and fishing in the frontier areas, exploitation of mines and forests in the frontier areas, prevention of frontier incidents, prevention of illegal movement of persons and smuggling of goods, extradition of fugitives, handling of persons not admitted to the territory of the other state owing to lack of proper documents, and other similar matters.

II. HIGH SEAS

A. Treaties on the Regime of High Seas

1. Treaties and Conventions on Specific Questions

In its treaties and diplomatic practice the Soviet Union distinguishes between that part of the sea surface which constitutes "open seas" (otkrytoe more) which is open to all states for navigation and other uses, and those parts of the sea which for various reasons are under the national control of individual countries.

The regime of the high or open seas is a part of general international law. Its basic rule is the principle of the freedom of all states to use the open seas without restriction, except that their exploitation of the high seas may not impair the rights of other nations. The regime of high or open seas may be the subject of special agreements concluded by many nations which either define more specially the uses of the high seas (fisheries) or provide certain regulations governing techniques of certain operations (such as navigation) or provide regulations to protect other legitimate uses of the open seas (protection of submarine cables.).

On February 2, 1926, the Soviet Union acceded to two conventions of

September 28, 1910, dealing with collisions at sea and salvage at sea. In 1935 (April 7) the Soviet Union acceded to the Barcelona Convention concerning the Flag of the Ships belonging to states which have no maritime coast of their own. It also became a party to the Final Act of the Conference on Safety at Sea and to the Convention prepared by that conference, both dated May 31, 1929.

The Soviet Union participated in the International Conference on Safety at Sea which was held in London in 1948. However, it refrained from signing the Final Act of the Conference at that time. In 1954 the Soviet government became a party to the Final Act and the annexed agreements, which also included among others the Convention on Safety of Life at Sea.

In 1954 the Soviet Union participated in the Conference on Pollution of the Sea by Oil. It signed the Final Act and the Annex containing eight resolutions and became a party to the Convention prohibiting discharging oil either from ships or from oil pipelines into the sea. The Soviet Union has incorporated into its provisions regulating navigation of Soviet ships on high sea, the rules established during the 1889 Washington Conference for the Prevention of Ship Collisions at Sea. (The Merchant Shipping Code of June 14, 1929, Code of Navigation Rules and Criminal Codes of the Soviet Republics). The Soviet Union also since 1931 has been a party to the Lisbon Convention on Maritime Signals.

The Soviet Union is a party to the convention of 1929 elaborated in London concerning Protection of Life on the High Seas, which includes regulations on equipment, construction of passenger ships, and navigation in dangerous areas. It also joined the Load Line Convention of July 5, 1930, together with its Final Act of the same date, which provided safety rules for the loading of ships of various categories. The Soviet government adopted the Agreement for a uniform System of Maritime Bouys of May 13, 1936. Finally on February 12, 1927, Soviet government announced continued adherence to the March 14, 1884 Convention on the Protection of Under-water Telegraph Cables.

2. The Convention on High Seas of 1958

The specific conventions, which in the course of years were subject to various modifications and revisions, were the basis of an effort by the International Law Commission to work out a systematic code of rules for high seas. A draft Convention on High Seas was debated at the international conference in Geneva held in April 1958. Along with other states it was signed by the Soviet Union, Ukraine and Byelorussia and subsequently ratified. According to the Convention, "high seas" comprise all parts of the sea that are not included in the territorial sea or in the internal waters of a state. It is open to all nations and no state may purport to subject any part of it to its sovereignty. High seas are free and accessible to all nations whether coastal or noncoastal. Freedom of the seas includes, according to the convention,

four aspects: freedom of navigation, freedom of fishing, freedom to lay submarine cables and pipelines, and freedom to fly over the high seas. Coastal and noncoastal states have the right to sail ships under their flags. However, access to the sea for a noncoastal state may be achieved only on the basis of an agreement with a coastal state which borders on the non-coastal state.

Ships may sail under one flag only and are subject to the jurisdiction of the state of the flag, except in specific cases provided in international treaties. Naval and government vessels are immune from foreign jurisdiction.¹¹⁴

The Convention contains provisions regarding piracy, slave trade, collision and salvage at sea. A warship of any state encountering a merchant ship on the high seas has no right to board that ship except when there is reasonable suspicion that it is engaged in piracy or carries slaves, and even though it refuses to show its flag, it is in fact of the same nationality as the warship.

The Convention defines the obligations of the states as regards pollution of the seas by discharge of oil from ships or pipelines, or from the exploitation of the seabed by that state, as well as the dumping of waste and pollution of the sea or air above by any activities which involve the use of radioactive materials. The Convention also lays rules regarding the right of laying submarine communication cables or pipelines and defines "hot pursuit". The Convention on High Seas did not replace earlier conventions concluded by the states.

3. Agreements on Rescue and Salvage at Sea

An important set of international agreements with which the Soviet Union amplified certain aspects of international cooperation in the regime of the high seas represent treaties dealing with salvage and rescue at sea. These treaties provide a systematic regime covering technical cooperation between the Soviet Union and adjacent countries regarding various rescue services in the maritime areas adjacent to the Soviet Union.

In the first place there are three agreements concluded between the Soviet Union and other socialist countries which have established a uniform regime regarding the rescue of ships or aircraft in distress in the Black Sea, the Baltic Sea, and the Western Pacific Ocean. Their purpose was to adapt the general provisions of law in this respect to the fact that rescue operations are the responsibility of governmental organizations and to assure that in case of dispute, courts or arbitration organizations set up by the socialist powers should have jurisdiction.

Parties to the treaty covering the Black Sea area are the Soviet Union, Bulgaria and Rumania. A similar treaty was concluded for the Baltic Sea by the Soviet Union, Poland, and East Germany; and finally a treaty dealing with rescue at sea in the Western Pacific Ocean was entered into by the Soviet Union with Red China and North Korea.¹¹⁵

Procedures set up in these agreements follow a single pattern for all three

areas. Rescue operations are undertaken on the basis of the so-called rescue contract which is concluded, if possible, before rescue operations have begun. Rescue of persons is a matter of course and is the duty of every sailing vessel at sea present at the place where the mishap occurs. It is effected without charge. Rescue of freight is a matter of contract. Rescue contracts are agreed upon by persons in charge of the ship and cargo in distress with the commanding officer of the rescue operations. As a matter of course, rescue contracts provide for the jurisdiction of a court or arbitral body to decide disputes arising from the contracts.

In addition the Soviet Union has five treaties with the free economy countries covering three maritime areas: The Baltic Sea, the Barents Sea, and the vast area of the Pacific Ocean including the Japan Sea, the Okhotsk Sea, the Bering Sea and the North West Pacific Ocean adjacent to the coasts of Japan and the Soviet Union.¹¹⁶

The purpose of rescue agreements with the nonsocialist countries is somewhat limited in comparison with the similar treaties entered into with the socialist countries. The purposes of these treaties are to establish a liaison between nations in order to assure that no call for assistance in certain maritime areas should be unheeded, to indicate that rescue organizations closer at hand should first be called to assist, and to provide that vessels of the contracting powers should first receive assistance from the rescue organizations of their own countries. As point 3 of Article I of the agreement with Japan of May 14, 1956 provides:

"In case the place of disaster is located near the coast of the other contracting party, or when it is deemed necessary, the sea disaster rescue agency receiving the information of the disaster shall make plans for rescue operations after consultation with the sea disaster rescue agency of the other contracting party. Such consultations shall be held invariably when the sea disaster agency of one contracting party receives a report that a vessel belonging to the other contracting party is in distress at sea."

Rescue treaties establish a mutual obligation to cooperate in rescue operations and a detailed system of radio communications between the interested parties.

In addition to the treaty with Japan, the Soviet Union has such treaties with four other countries concluded in 1956, all of them bilateral: Denmark (March 6, 1956, followed by the exchange of notes of June 14, 1956), Finland (December 7, 1956), Norway (October 19, 1956), and Sweden (September 29, 1954).

The treaty with Norway refers to cooperation between the Soviet Union and Norway regarding the area of the Barents Sea, while the purpose of the treaties with the other three powers is to cover the Baltic Sea.

The set of the rescue treaties reflects the fact of the paramount Soviet interests in certain open sea areas in which Soviet ships and fishing craft are likely to be predominately represented. Another treaty in this category is the July 28, 1923 treaty with Finland concerning maintenance of order in that

part of the Finnish Bay which extends outside territorial waters, upkeep of maritime installations and pilotage services.¹¹⁷

4. Agreements on Fisheries, Seal Hunting and Whaling

Although in terms of navigation the geographical position of Russia presented serious disadvantages to her development as a major world naval power, at the same time the cold oceans which washed her shores were a source of important marine life resources which she strove to reserve for her subjects. The Soviet Union inherited from the imperial regime the policy of protecting those areas which lay in its immediate physical control, while at the same time safeguarding an uninhibited access to those areas of fishing and marine hunting which were open to all nations.

The first important Russian commitment to the principle of regulation of the exploitation of marine life was the Convention for the Protection of Fur Seals of 1911 in the North Pacific Ocean, north of the 30th parallel. Control over the observance was placed upon the men of war of the signatories, which were given the right to search and seize vessels suspected of infringement of the regulations laid down in the convention. The Soviet Union recognized this Convention as still in force for the Soviet Union in 1926. To enforce the 1911 Convention, the Council of People's Commissars issued on February 2, 1926 a regulation restricting furseal hunting.¹¹⁸

The interwar years were not otherwise significant regarding the participation of the Soviet Union in the development and policing of a general regime concerning the protection of marine life resources. For instance, the Soviet Union has not become a party to the 1882 Convention on Fisheries in the North Sea and in the system of controls established by the convention.

In the post-World War II period the Soviet Union acceded to the 1938 Convention on Whaling (November 25, 1946), and then signed a new Convention on Whaling of December 2, 1946, which established an International Whaling Commission to meet each year to issue yearly schedules of whaling and to provide for technical standards in whaling. The Soviet Union has a representative on the Commission. However, the Soviet Union did not join the 1952 International Convention for the High Sea Fisheries of the North Pacific Ocean.

In 1953 on the basis of the Convention of 1952 the International North Pacific Fisheries Commission was established with the task of coordinating research as regards fishing resources in the area of the Pacific covered by the 1952 Convention and of formulating proposals as regards protection of the fishing resources. Representatives of the Soviet Union participate in the work of the Commission in the capacity of observers.

In 1957 the Soviet Union participated in the Washington conference which adopted the temporary convention for regulation of fur-seal hunting in the north Pacific and established the North Pacific Fur Seal Commission to provide for protective measures designed to prevent the disappearance of

the fur-bearing seals. Each signatory power (Soviet Union, USA, Canada and Japan) has one member.

The Soviet Union is a participant in the International Council for the Exploration of the Sea, which is an organization for the coordination of research relating to oceanographic fishing resources for the North Eastern Atlantic Ocean, North Sea and Baltic Sea. Further the Soviet Union is a member of the Permanent Commission of the International Fisheries Convention of 1946. This Convention, which covers the area of the north eastern Atlantic Ocean and the Arctic Ocean, came into force on April 5, 1953, after its ratification by all parties to the Convention. This Convention determines the amount of fish which can be taken each year and the size of the meshes of the fishing nets to be used by the fishing vessels in the areas covered by the Convention. The Soviet Union also participates in the International Commission for the North West Atlantic Fisheries, which has similar duties as the Commission for the North Eastern Atlantic. The North West Atlantic Commission was created on the basis of the Fisheries Convention signed in Washington in 1949 which came into force in 1950. Of the bilateral treaties concluded with the free economy countries, the following bilateral conventions must be mentioned. In 1965 the Soviet Union and Britain signed a convention on fishing in the Barents Sea. In 1957 the Soviet Union and Norway concluded a convention regarding measures for the regulation of seal hunting and for the protection of seal reserves in the North Eastern Atlantic Ocean. In 1922 (September 20) the Soviet Union concluded an agreement concerning fishing in the Gulf of Finland with Finland.

An important treaty regarding salmon fisheries in the North West Pacific Ocean was signed on May 14, 1956, between the Soviet Union and Japan. The Convention covers, in addition to the north west part of the Pacific Ocean, the Japan Sea, Okhotsk Sea and the Bering Sea. It established a joint Northwest Pacific Fisheries Commission which gathers statistical information, organizes research, coordinates scientific programs and fixed the annual catch of salmon to be taken by both parties. The Convention also provides for the right of each party to search and visit the fishing craft of the other contracting party and, in case of violation of the rules of fishing, to seize and arrest a vessel for the punishment of the violators by the party of their nationality.

On June 12, 1956, Communist China, North Korea, North Vietnam and the Soviet Union signed a convention to organize a program of oceanographic and marine life research in the area of the Western Pacific, including the Sea of Japan, the Yellow Sea, and the Eastern and Southern Chinese seas. On December 15, 1958, Mongolia joined the Convention. The task of the commission is scientific research, primarily through its coordination of research in the member countries; dissemination of its results; formulation of proposals regarding protection of fishing resources; and accumulation of statistics.

On June 12, 1959 an agreement providing for the creation of the Mixed

Commission for the Protection of the Fisheries in the Black Sea was signed between the Soviet Union, Rumania and Bulgaria. The Commission's duties include formulation of recommendations for the governments of the contracting parties, along with scientific and statistical work.

As yet the Soviet Union has failed to ratify the Convention on Fishing and Conservation of the Living Resources of the High Seas, prepared by the International Law Commission as one of the four conventions constituting a codification of the modern law of the sea and adopted by the United Nations Conference on the Law of the Sea (February 25-April 27, 1958).

B. Freedom of the Seas and Restrictive Doctrines

The present international law position regarding the regime of the high seas is determined by two conflicting tendencies. On the one hand the principle of freedom of the seas is still maintained in its original compass. On the other hand the exercise of this freedom is increasingly being restricted by international treaties. It is still true that the freedom "includes" the right to come and go on the high seas without let or hindrance, and to take therefrom at will and pleasure the produce of the sea.¹¹⁹ However, it is also true that navigation is regulated and that fishing, whaling and seal hunting regulations cover almost the entire expanse of the oceans. Maritime natural resources, although seemingly inexhaustible, are showing signs of being under dangerous pressure, and were it not for the international protection of the whale, the fur-seal and the salmon, some species of maritime life might have already disappeared.

1. The Law of the Flag

a. Flag and Nationality

The regime of the freedom of the seas is primarily serving the ships flying the flags of states, members of the international community.

The direct effect of the rightful use of the flag is that a ship on the high seas is subject only to the authorities of its own state, and that in foreign ports it is under the protection and jurisdiction of the consular representatives of its own state. The right to use the flag is controlled by the internal legislation of each country concerned, with the proviso that the 1958 Convention on the High Seas seeks to prevent registration and the use of flags of convenience, and insists on the technical and administrative control of the ship by the state of the flag or of its true nationality, according to the real link doctrine.

In Soviet law the real link doctrine is given full effect particularly as all merchant shipping and most of the seagoing fishing fleet is in government ownership. According to article 6 of the Merchant Shipping Code of the Soviet Union of 1929:

“Only those ships may use the flag of the USSR which belong to:

- a. Soviet state organizations or enterprises,
- b. cooperative organizations of Soviet cooperative system,
- c. other legal entities, with the exception of organizations in which foreign capital is invested,
- d. citizens of the USSR.”

In practice ships flying Soviet flags come into two categories:

a. those owned by the Soviet state, controlled by the Ministry of Merchant Marine, either managed by governmental enterprise or those owned by the fishing collectives,

b. owned by private citizens of the Soviet Union, not exceeding however 50 tons with engines not exceeding 15 horsepower, or those used for sport with motors not exceeding 10 horsepower.¹²⁰

b. *Trade and Navigation Agreements*

Another important source of rules regarding the nationality of the ship, are Soviet trade and navigation agreements with other countries. Their main purpose is to establish a uniform regime as regards the treatment of foreign ship in Soviet ports, in exchange for a similar treatment of Soviet ships in foreign ports. As the May 11, 1940 Trade Agreement with Yugoslavia (Article V) stated:

“Nationality of ships shall be determined in accordance with the legislation of each of the Contracting Parties on the basis of documents and letters patents which are aboard the ship and are issued by the competent authorities of the country of the respective Party.”

The agreement also provided that “the same legal force shall attach to documents and attestations issued by the competent authorities of the countries of the ship’s flag as regards the displacement of the vessels.”

In the Trade and Navigation Agreement with Japan (December 6, 1957) Article 8 provided that:

“Ships flying the flag of one of the Contracting Parties, provided with the documentation required by the legislation of the party to prove the nationality of the ship, shall be recognized as belonging to the country of the flag. Affidavits concerning the displacement of the ships belonging to the countries of the Contracting Parties, as well as other technical documents pertaining to the ship and concerning ship’s tonnage, issued or confirmed by one of the Contracting Parties, shall also be recognized by the other party. Accordingly, the ships of each Party, equipped with proper displacement documents, shall be free from new measurements in the ports of the other Party, and the tonnage of the ship stated in the certificate shall be accepted as the basis for the calculation of harbor fees and duties.”

Provisions of the Soviet Trade and Navigation Agreements with other countries must be read in conjunction with Article 36 of the Soviet Merchant Shipping Code of 1929, which states that:

“Recognition of measurement certificates, of the certificates on the

extent of free board, certificate of seaworthiness, license to transport passengers, license to use naval radio installations kept on a foreign ship, and for visiting the Soviet harbor, are granted on the basis of agreements of the USSR with foreign powers.

c. *Cabotage*

It is usual practice to reserve the right to carry goods between two ports of the same state located on the same sea, or on two different seas (small and great cabotage) to domestic shipping lines. By way of agreement cabotage privileges may be granted to foreign shipping.

Provisions of the Soviet Merchant Shipping Code follow the usual practice. It rules (Article 70) that goods and passengers between Soviet and foreign ports may be carried by Soviet and foreign ships, except in cases when special regulations are issued by the Council of Ministers of the Soviet Union. Cabotage however, both small and great is reserved to ships under the flag of the USSR. According to the Code Black and Azovian Sea are considered one sea, the same applies to the White and Arctic Seas, the Japanese Sea, the Sea of Okhotsk, and the Bering Sea.

Exceptions to this rule are possible, and in order to save time, or to provide service which otherwise would not be available, foreign ships may be allowed to operate in small and great cabotage. Such rights may also be mutually granted by means of international agreements. E.g., trade and navigation agreements between the Soviet Union and North Korea reserved the right of cabotage in the adjacent seas to ships and shipping organizations of both countries excluding all foreign shipping.¹²¹

2. *Unilateral Restrictions of the Freedom of the Seas*

Treaties imposing general standards on all states are not the only source of rules governing the conduct of states on the high seas. In addition, there are unilateral actions which seek to protect either national or international interests outside the territory of the states involved; e.g., in order to protect the salmon fisheries threatened by Japanese overfishing, the United States and Canada took unilateral measures in this respect which clearly extend beyond the limits of the territorial waters. Similar actions were taken by other countries. While there was some international controversy in this respect, on the whole the idea was accepted, as it was in the final analysis both reasonable and in the interest of all.

It is easy to recognize that the type of unilateral restriction of the freedom of the seas is characterized by the generally acceptable effects of such action (e.g., regulations of fisheries and protection of marine resources) to the international community and by the superior force of a state undertaking such action, assuring its success.

From this type of action must be distinguished a temporary restriction of the freedom of the seas, in order to use the high seas for a specific project,

legally justified by either the principle of the freedom of the seas or by other principles. Inasmuch as Soviet rights were affected by such actions, three situations are described.

First was the state of belligerency between Nationalist China and Communist China and consequent control of shipping exercised by Chinese Nationalist ships in Chinese waters with American support. The second was the situation created in 1962 by the Soviet effort to place medium range ballistic missiles capable of delivery of nuclear warheads in Cuba. The third was the use of the ocean space for nuclear testing.

The position of the Soviet Union in each case was that this type of action was contrary to the principle of the freedom of the seas and therefore illegal, leading to formal protests against American action.

a. *The Tuapse Case*

On June 24, 1954, a Nationalist Chinese destroyer apprehended and brought to the port under its control a Soviet tanker carrying a load of kerosene for the Chinese People's Republic, whose forces were actively engaged in hostilities with the forces of Nationalist China. As the Soviet Union did not maintain diplomatic relations with the Nationalist government, it addressed its protests to the US government, claiming that, as capture took place in the international waters controlled by the US fleet, it was the American destroyer which effected capture. The first Soviet note of June 24, 1954, stated that this act "grossly violates the freedom of the navigation of the open sea."¹²² The US government replied that it could not be responsible for the actions which it did not undertake. A Soviet note of July 2, 1954, still charged the American government with complicity in this act, alleging that in the area under control of the American fleet the matter of flag is immaterial.¹²³

b. *Buzzing by American Planes*

On August 3, 1954, the Soviet government charged in a note to the American government that American planes were "making regular flights over Soviet merchant ships on the open sea near Taiwan."

"Such provocative actions by American military aircraft are a clear violation of the freedom of the seas and testify to the US military authorities' utter contempt for universally accepted standards of international law."¹²⁴

While the early phases of the buzzing complaints related to facts allegedly taking place in the Formosa area, in 1960 the Soviet memorandum cited cases of buzzing Soviet ships in the Norwegian Sea, the Sea of Japan, in the Mediterranean, in the Straits of Gibraltar, and in the Atlantic Ocean. The memorandum alleged that in the course of five months of 1960 US planes had buzzed Soviet ships some 250 times. On several occasions, the note continued, American aircraft took photographs of the Soviet ships. The note further complained that the US Department of State justified buzzing

by American security interests. In this connection the Soviet memorandum contained a highly significant passage: "However, such references are completely out of place and cannot deceive anyone. Indeed, who can believe that Soviet trade, fishing and research ships engaged in peaceful activity represent a threat to the security of the United States, especially in view of the fact that these ships are being buzzed at thousands of kilometers from the shores of the USA."¹²⁵

c. *Alleged Shelling of Soviet Ships by American Naval Craft*

Another example of an incident which produced Soviet protests was the case of a Soviet trawler-refrigerator on March 8, 1963, which was allegedly fired upon by two American cruisers using a dummy type of shell 70 nautical miles from Norfolk, Virginia.¹²⁶ On two occasions the Soviet government protested against firing on Soviet ships in Cuban ports on March 17 and March 27, 1963, from boats controlled by insurgents against the Castro regime in Cuba.¹²⁷ In each case the Soviet government lodged a protest with the American government demanding proper measures and payment of damages on the ground that such action constituted piracy for which the American government was responsible as the only possible source of weapons and equipment.

d. *The Cuban Crisis*

A special situation arose in connection with the so-called Cuban interdiction and the maritime quarantine instituted by the U.S. government in response to the Soviet government's plan to establish a number of intermediate ballistic missile ranges in Cuba within 90 miles of American territory. On October 22, 1962, President Kennedy announced a so-called "strict quarantine on all offensive military equipment under shipment to Cuba." The interdicted shipping was to be turned back, and if necessary this quarantine was to be extended to other types of cargo and carriers. The decision of the American government was followed the next day by a resolution of the Organization of American States supporting American action. In the following days a quarantine area was designated and elaborate arrangements were made to assure control and supervision of all shipping including submarines. This action involved a vast program of supervision and tracking. Some eighteen Soviet ships and a number of Soviet submarines operating in the Caribbean and adjacent areas were detected, tracked and their course checked. Soviet ships with destinations to Cuba changed course and returned to their home ports. Submarines were forced to surface and were photographed.

American action evoked immediate Soviet reaction in the form of the protest of October 28, 1962, invoking the freedom of high seas, accusing the U.S. government of naval blockade and piracy and threatening counter-action should the rights of the Soviet ships on high seas be violated. However, as time went on and Soviet ships were diverted from the scene of the qua-

quarantine, the issue became not one of violation of the freedom of high seas but of the solution to the crisis. The Council of the Organization of American States in its resolution called for "immediate dismantling and withdrawal from Cuba of all missiles and other weapons with offensive capability."¹²⁸ The crisis was resolved through the good offices of the U.N. Secretary-General. The agreement reached between the Soviet and American governments provided for removal of offensive weapons and a specified number of intermediate range rockets from Cuba in exchange for American lifting of the quarantine and assurance against invasion of Cuba. The essential part of this agreement was the jointly established technique for the checking of the removal of offensive weapons from Cuban territory, including a certain number of rockets, and of the medium bombers capable of carrying nuclear weapons. As President Kennedy announced on November 20, 1962, a part of the agreement was to "remove from Cuba all weapons systems capable of offensive use, to halt further introduction of such weapons into Cuba and to permit appropriate United Nations observation and supervision to insure the carrying out and continuation of these commitments . . ."¹²⁹

Soviet behavior in the Cuban crisis would seem to indicate that the Soviet government accepted the principle of the quarantine which included search and visit, followed by the diversion of the offending ships (thus interfering with their freedom of navigation), and these ships carrying the crated weapons back to the Soviet Union; all of this, however, without the boarding of the ships by naval forces.¹³⁰

e. *Nuclear Weapons Tests on High Seas*

Another important occasion for the reassertion of the principle of freedom of high seas was in the practice of conducting nuclear tests in the remote areas of the Pacific. In its note to Great Britain relating to the announced intention of the British government to conduct hydrogen bomb tests in the area of the Christmas Islands in the Pacific, the Soviet government pointed out that it:

"... cannot ignore the fact that the British government's practice of arbitrarily establishing a vast danger zone in central Pacific, a zone in which international sea and air lanes are located, directly contradicts the principles of international law on freedom of the open seas. The staging of nuclear weapons tests in this area jeopardizes the health and the lives of the people who inhabit nearby islands, obstructs freedom of navigation and fishing and results in the infringement of rights of other states."¹³¹

In another note, this time addressed to the U.S. Department of State in connection with the announcement that a danger zone was established in the Marshall Islands in the Pacific as of April 5, 1958 for U.S. testing of nuclear weapons, the Soviet government expressed the opinion that:

"The U.S. establishment of a danger zone area of about 1,400,000 square kilometers from U.S. borders along international sea routes not only hampers freedom of navigation and fishing but also violates the rights of

other states and places them in serious danger. According to generally recognized norms of international law, the high seas are free to all nations and all states are obligated to refrain from any acts which might jeopardize freedom of navigation and fishing or threaten the security of other states.”¹³²

The same theme occurs in connection with the 1962 U.S. plan to conduct a series of tests in outer space from its testing area of the Marshall Islands. Such tests, the Soviet government alleged, would not only interfere with shipping and air traffic in important parts of the Pacific, but would also seriously endanger space travel by intensifying radiation which may affect the health or life of the cosmonauts in their space ships. Such explosions, one of the Soviet statements asserts, may affect the weather thereby having a deleterious effect. In the final analysis this type of activity:

“... concerns the interests of all countries, may affect lives of a great number of peoples, and create serious difficulties in the work of further space exploration.”¹³³

Similar protests were evoked by the French nuclear weapons test in the Pacific.

f. Soviet Explanation of Soviet Unilateral Actions

The Soviet position in explaining similar actions of their government was formulated in a series of notes in reply to similar charges made by the Western governments. Its position is that Soviet nuclear explosions are only a reaction to the actions of the Western governments; and when compared with the number of tests conducted by Western powers and the amount of nuclear debris in the atmosphere due to these explosions, Soviet Union tests are less numerous and have put a smaller amount of debris in the atmosphere. Further, the Soviet Union has a right to an equal number of tests as the Western powers.¹³⁴ The resolution of the Cuban crisis, which brought about the withdrawal of Soviet intermediate range ballistic missiles, seems to indicate Soviet acceptance of the American government's position that it has the right to prevent the placement of aggressive weapons in the areas bordering upon the United States. Furthermore, the American practice of surveying Soviet ships in the Formosa area and during the Cuban crisis has been taken up by the Soviet Union itself.

While some Soviet unilateral actions restricting the freedom of the seas represent adaptation of similar actions by other countries (primarily the United States), the Soviet government evolved its own doctrines affecting the freedom of the seas.

3. The Doctrine of Mare Clausum

After World War II the Soviet Union sought in three maritime areas to establish a situation which would legally give to its naval and air force control and assure its interests a dominant position. The defeat of Germany, incorporation of the Baltic republics, creation of the communist regimes in

countries bordering along the southern coast of the Baltic Sea, sovietization of Bulgaria and Rumania, acquisition of Sakhalin and the Kurill Islands and occupation of the Japanese Islands of Habomai and Shikotan, all have strengthened the Soviet position in the Baltic Sea, Black Sea, and in the Far East in general, to the extent that the Soviet Union has sought formal recognition of this new balance of power in new legal arrangements.

a. *The Black Sea in the Post-World War II Period*

Control of the Black Sea depended upon the control of Turkish Straits, which under the regime of the Convention of Montreux relied primarily upon the Turkish defenses.

The principle that the Montreux Convention needed revision had already been agreed to during World War II. The Yalta Conference produced a formula which spoke of Soviet proposals to be deliberated upon by the foreign secretaries of the three major allied powers. On March 19, 1945, the Soviet Government denounced its earlier treaties of friendship with Turkey, and on June 7, 1945, it offered to conclude a treaty of friendship and cooperation, similar to those with its satellites in Eastern Europe, provided that a new regime of the Straits was established, and Turkey ceded the Kars Ardahan area. The Postdam Conference produced an agreement that the three governments would separately approach the Turks with the same object in view. It is also quite probable that at that time the Soviet government had already presented its demands for military control of the Straits, though it is doubtful whether any of the other partners had agreed to it.¹³⁵ When the Soviet Government made public its demands of military control of the Straits it gave as its reason for the revision numerous violations of the Montreux Convention during the war. Some of the Soviet charges were based on events which took place in 1941, prior to the Soviet-British assurances of August 10, 1941, that both powers would remain bound by the Montreux Convention, and would respect the territorial integrity of Turkey. The Soviet view was not shared by the other Western Allies. At least the power most concerned, Great Britain, made clear its point of view in this respect, and the British Foreign Secretary declared in the House of Commons that although there was some disagreement between the Turks and the British regarding the interpretation of certain clauses of the Convention, on the whole the Turks had lived up to their obligations.¹³⁶

This fundamental difference in the reasons for reviewing the Montreux Convention was reflected in the scope of the revisions desired by each of the three governments concerned. The Soviet Government felt that the very principle of the security of its territory was involved, and that the new regime ought to establish safeguards to that effect. Soviet demands as finally made public in its note of August 7, 1946, consisted of the following five points:

1. Straits should be free to merchant shipping of all nations;
2. Straits should be open at all times to warships of Black Sea powers;

3. Straits should be closed to warships of non-Black Sea powers except in cases especially agreed upon;

4. The regime of the Straits, which are a waterway to and from the Black Sea, are of concern exclusively to the Black Sea powers, and as such ought to be within the exclusive jurisdiction of Turkey and other Black Sea powers;

5. Turkey and the Soviet Union, being the states most vitally interested and able to safeguard the freedom of navigation and security in the Straits, shall jointly organize the defense of the Straits in order to prevent their use for hostile purposes against the Black Sea powers.¹³⁷

The United States and British Governments, however, failed to share the Soviet point of view in its entirety. Soviet legitimate interests could be met, in the opinion of the United States Government, by the following changes in the Montreux regime:

1. Straits to be open to merchant shipping of all nations, at all times;

2. Straits to be open to the transit of warships of the Black Sea powers at all times;

3. Passage through the Straits to be denied to warships of non-Black Sea powers at all times, except when acting under the authority of the United Nations.¹³⁸

The second American note of August 19, 1946, to the Soviet Government in connection with the Soviet note to Turkey emphasized two basic points of difference between the Soviet and American points of view. First, the U.S. Government saw no reason to depend on Soviet military bases in the straits for the maintenance of peace and security in that part of the world. Turkey should be primarily responsible for the defense of the Straits:

“Should the Straits become the object of attack by an aggressor, the resulting situation would constitute a threat to international security and would clearly be a matter for action on the part of the Security Council of the United Nations.”

Secondly, the chief point in revising the Convention would be to bring the regime of the Straits into appropriate relationship with the U.N. so that it should function in a manner and in accordance with the aims of that organization.¹³⁹

Still more outspoken in their rejection of the Soviet proposals were the British. The British Foreign Secretary in the pronouncement in the House of Commons already referred to declared that:

“At the various international conferences during the last three or four years, and their latest correspondence with the Turkish Government the Soviet Government have made it clear that they are anxious to obtain a base in the Straits, which would ensure, in effect, that the control of this waterway would rest in the hands of the Soviet Union and not in the hands of the territorial power most clearly concerned. His Majesty’s government have made it clear that in their view, if this were adopted it would involve unwarrantable interference with the sovereignty of Turkey . . . and would also represent an improper interference with the rights of other powers con-

cerned . . . His Majesty's government are very anxious to keep the international aspect of this waterway always in view . . . it had for a long time been internationally recognized that the regime of the Straits was the concern of other powers beside the Black Sea powers, and that they would not, therefore, accept the Soviet view."¹⁴⁰

To complete the account of international events set by the publication of the Soviet note of August 7, 1946, the Turkish government accepted in principle the first three points of the Soviet note as the basis for negotiations, reserving to itself the right to raise certain points when it came to the actual settlement of practical issues. However, it rejected points 4 and 5 as contrary to the rights of other nations and to Turkish sovereignty, and as an invasion of Turkish security and independence.

In its note of September 24, 1946, the Soviet government refused to accept the Turkish point of view. It advanced the argument that the Black Sea is a closed sea. It reminded that in its early treaties with revolutionary Russia, Turkey had accepted the principle of the exclusive jurisdiction of the littoral powers over the Black Sea and the regime of the Straits, and finally, that the principle of joint defense is in accordance with the provisions of the U.N. Charter, because it is intended to promote conditions of security in the Black Sea area, and contribute to the maintenance of peace in general.¹⁴¹ At the same time the Soviet press drew attention to the fact that Soviet demands represented only the return to the old principles of the Russo-Turkish military cooperation expressed in the three defensive alliances of 1798, 1805 and 1833.

The question of the Straits was once again raised by the Soviet delegation during the Paris Peace Conference in 1946. But obviously that was not the place to achieve a solution of this problem.

Faced with Turkish intransigence and frustrated by the support given to Turkey by Britain and the United States, the Soviet government was forced to modify its demands on Turkey but did not abandon its position on the principle that the Black Sea is a closed sea and must be under the exclusive control of the Black Sea powers. The Soviet note of May 30, 1953, restated the question of the new regime for the Black Sea in more friendly terms. The Soviet government now felt that the Turkish government had "been unduly disturbed" in these matters, with consequent deleterious effects on Soviet-Turkish relations. Now, the Soviet government stated, the Armenian and Georgian Soviet Socialist Republics, in the interest of preserving good neighborly relations and strengthening peace and security in the region, had found it possible to renounce their claims on Turkish territories. Moreover, the Soviet government had reviewed its policy as to the problem of the Turkish Straits and "deemed it possible to ensure the security of the Soviet Union in the area of the Straits under conditions which would be equally acceptable both to the Soviet Union and Turkey." Consequently, the Soviet Union now had "no territorial claims against Turkey."¹⁴²

b. *The Baltic Sea and Danish Straits*

The Soviet position in the Baltic Sea is painted in less bold strokes. Traditionally, Russia never entertained claims to predominance in that area as she did in the Black Sea. In the first place, until recent years she had never achieved the stature of the number one power in the Baltic Sea and was faced with the naval supremacy of Germany. Secondly, before World War II the Soviet coastline in the Baltic Sea was limited to the Finnish Bay which she controlled together with Finland.

And yet during that period a note of serious alarm is visible in the letter (July 8, 1925) from Chicherin, Soviet foreign commissar, to a Soviet commercial representative in Denmark in connection with the information that Denmark had begun the work to deepen and regulate the Sund. Moltke, Danish foreign minister, had assured the Soviet representative that this work was undertaken to permit freer and safer movement of merchant shipping. However, Chicherin was far from satisfied. He would not accept the assurance of the Danish minister in Moscow that even after the works were completed the largest ships would not be able to negotiate passage. "It is obvious," he wrote, "that under English influence the Danes are making Sund passable for the largest ships. Denmark . . . has left her old traditional position denying Baltic to strong foreign naval forces. This was considered in the interest of Denmark herself as Copenhagen, owing to its geographical position, is threatened by the fleets already able to pass through the Straits. Today came the end of those old traditions. However, we ought to struggle with all means against this unceremonious opening of the Baltic Sea to foreign naval fleets."¹⁴³

At the Lausanne Conference it was declared (December 19, 1922) that in its conversations with its Western neighbors, the Soviet government had raised the question of the neutralization of the Baltic.¹⁴⁴

During World War II, in cooperation with Germany (1939-1940), the Soviet Union acquired Estonia, Latvia and Lithuania, while the port of Memel went to the German Reich. In the Peace treaty with Finland (March 12, 1940) the USSR acquired further the right to maintain bases on Finnish territory, which gave it mastery of the eastern Baltic Sea and the Finnish Bay. As the war went on it became increasingly clear that the terms of territorial delimitation established in the annex to the Ribbentrop-Molotov pact would not be respected by the German side. Initially, Soviet interests in Finland and its use of Finnish territory increased. German troops travelled through Finland to Norway, and Germany obtained control of Finnish nickel. The matter was discussed during Molotov's visit to Berlin, but his protests fell on deaf ears. Beyond verbal assurances as to the temporary nature of German interests in Finland no concessions to Soviet uneasiness were made and Soviet plans for further territorial acquisitions in Finland were not accepted.¹⁴⁵ After World War II, the Soviet Union emerged as the principal naval power in the Baltic. In addition to its former acquisitions the Soviet government annexed the naval base of Koenigsberg in East

Prussia and obtained control of the Polish and West German coastline.

The formal demand to close the Baltic Straits has never been repeated since the Rome conference of 1924. In the discussions with Ribbentrop during his visit in Berlin in November 1940, Molotov sounded out German attitudes on the question of the Soviet participation in the control of the Baltic Straits, which Germany obtained by invading Denmark and Norway. He informed Ribbentrop that "the Soviet government believed that discussions must be held regarding this question similar to those now being conducted concerning the Danube Commissions." However, Ribbentrop evaded the issue and refused to commit himself.¹⁴⁶

There is no evidence that during World War II or in the ensuing period have the major allied powers been faced with a Soviet demand for a special and privileged position in the Baltic Sea. However, soon after the war, Denmark and Sweden, the only two independent states on the Baltic Sea, were involved in a controversy over a series of incidents resulting from Soviet actions. The circumstances of the controversy, touching upon the very foundations of rights of nations in the open seas; Soviet unwillingness to compromise or have its claims adjudicated; and hints from the Soviet side at a conference of Baltic states to establish a regime in the Baltic—all seem to indicate that the Soviet side desires more than to assert its rights.

The core of the controversy is the 1927 Soviet decree which extended Soviet territorial waters to twelve nautical miles. Before World War II, however, the whole question was academic, as Russia controlled no Baltic coast, and the Gulf of Finland was subject to a special regime established in a Russo-Finnish Treaty of 1921. A treaty signed by all Baltic states including the Soviet Union in 1925 regulated the exercise of customs control to prevent smuggling and contraband traffic, which seems to indicate that without this treaty Soviet authorities would not feel free to exercise customs control, although authorized to do so under the 1927 decree.

Since World War II, Soviet authorities have detained a number of Swedish fishing vessels under the charge of fishing within the territorial waters of the Soviet Union. However, the captains and members of the captured vessels invariably refused to admit this charge and claimed that they were captured outside the twelve mile belt. The Swedish note of May 4, 1950, protested against the seizure of two fishing craft and contended that both these vessels were captured outside the 12 mile zone, one at a distance of twenty and the other at sixteen and a half miles. The Soviet note of May 26, 1950, rejected the protest alleging that the vessels were fishing within the twelve mile coastal waters. The experience of Denmark was similar. After the war came to an end, several Danish vessels were captured within or outside the twelve mile belt. On July 24, 1950, the Danish and Swedish governments presented identical notes in Moscow in which they challenged the principle of the twelve mile belt under exclusive Soviet jurisdiction and invoked their ancient and never contested right to fish outside the three mile limit. The exchange of notes continued and finally the

two governments suggested to Russia that the case be submitted to the International Court of Justice for adjudication, which suggestion was duly rejected by the Soviet government. In its opinion, the matter lies within the exclusive jurisdiction of the Soviet legislative authority, and there is no reason to appeal to an international court for the decision in this matter.

On June 13, 1952, a Swedish military aircraft flying over the Baltic failed to return to its base. On June 16, 1952, two unarmed Swedish Catalinas conducted a search in the general area in which the plane was lost, and one of them while at least some fifteen nautical miles from the Soviet coast was destroyed by Soviet fighters. The Swedish government protested, the Soviet government rejected the protest, and in its turn protested against the violation of Soviet territory by the first Swedish military plane and the destroyed Catalina, charging them both with opening fire on Soviet planes. The exchange of notes leaves little doubt as to Soviet responsibility. The Soviet government made the mistake of charging the unarmed Catalina with opening fire on Soviet aircraft. Moreover, while Swedish notes quote evidence to support the contention that none of the aircraft involved was within the twelve mile limit and flew over incontestably international waters, the Soviet government simply rejected Swedish statements, or offered forced interpretations of Swedish accounts of facts. It never produced or referred to evidence of its own.¹⁴⁷ The Soviet claim that the delimitation of sea areas in view of the absence of clear principles of international law on the subject is strictly within the exclusive domestic jurisdiction, cannot be entertained. The International Court of Justice has made it clear (*Anglo-Norwegian Fisheries case*, Dec. 18, 1951) that:

“The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal state as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only a coastal state is to undertake it, the validity of delimitation with regard to other states depends upon international law.”¹⁴⁸

Obviously the issues involved and the scope of the controversy are not so conclusive as to determine the purpose of Soviet actions. It is clear, in view of the constantly repeated complaints of the Danish and Swedish governments, that capture of fishing vessels and destruction of Swedish airplanes took place outside the twelve mile limit. Evidently, something more than enforcement of the Soviet legislation on the width of the coastal belt is the goal. Indication as to what it is can be gained from the enunciations of Soviet scholars, who, since the question of the status of the two seas has become a point of interest for the Soviet government, have taken great pains in explaining the Soviet point of view and arguing it in the light of the provisions and doctrine of international law.

c. *Theory of Mare Clausum*

The official theory on the regime of various seas is of most recent origin. The textbook *Mezhdunarodnoe Pravo* (International Law) published by the Soviet Academy of Sciences in 1947 still contains none of the militance which appears in Soviet studies on the subject published but a short time later. According to this work there are two categories of seas: high seas open to all and closed seas which are geographically closed, such as the Caspian, Dead Sea, etc. In this book there is no reference to "mare clausum" in the political and legal sense.¹⁴⁹

The treatment of historic events in this edition of *Mezhdunarodnoe Pravo*, which contributed to the emergence of the present status of the Baltic and Black Sea Straits, reveals no striking dissimilarities from accounts of scholars of other nations. With regard to the Danish Straits, the 1857 Convention which contained no prohibition of passage of foreign warships is still in force. The 1947 edition reported that the closing of the Straits during World War I and their mining by the Danish government caused the Russian government to protest.¹⁵⁰ Similarly, Soviet scholars are quite orthodox in their account of the history of the Turkish Straits and interpretation of various international agreements which dealt with the regime of these narrows. In their opinion, Turkey was sovereign in the Straits till 1833. An alliance concluded with Russia in that year made the Straits accessible to Russian men of war. This situation was terminated by the London protocol of 1840, which was the first multipartite treaty, and Turkey regained control of the Straits. Since that time the regime of the Straits has been a matter of concern for international agreement.¹⁵¹

However, a study on the Turkish Straits published in the subsequent year by Dranov (1948) demonstrates a new approach to the problem. One cannot escape the impression that the new attitude must be credited directly to the new interpretation of the current political situation announced at the Warsaw meeting of the Communist parties in September 1947, and the resultant creation of the Cominform. The principle of the unity of purpose and method of action of the four major allies was replaced by the theory of the division of the world into two hostile camps headed by the United States and the Soviet Union. Since 1948, Soviet scholars are firmly convinced that claims to free access of their men of war and participation in deciding matters relative to the regime of the Straits advanced by non-Black Sea Powers represent usurpation unwarranted either by historical precedent or by the principles of the law of nations currently in force. They claim that the Kutchuk Kainardzi Agreement (1774) changed the status of the Black Sea from the Turkish inland lake into the Russo-Turkish inland lake.¹⁵²

"Beginning with the Kutchuk Kainardzi Agreement in 1774, all agreements . . . up to . . . the Montreux Convention of 1936 have admitted a special position in the Black Sea to the littoral states, and to a smaller or greater degree have limited the entry of the warships of other states to the Black Sea . . . In this manner the main sources of international law — international

treaties and agreements – have recognized the Black Sea as a closed sea.”¹⁵³

Similar liberties were taken with the facts as to the situation in the Baltic.¹⁵⁴ In the opinion of Soviet professors, all seas fall into three categories, internal, closed, or open seas. Internal seas are those surrounded by the territory of one state, and subject to its exclusive jurisdiction. Closed seas are enclosed by the territories of two or of a limited number of states, either not having communication with the open sea, or having such communication but leading only to the shores of the littoral states. The regime of these seas is a matter of exclusive concern of the littoral states. The Aral, Azov, and White seas are internal seas, while the Caspian, Baltic, and Black seas are closed seas. Although it is within the exclusive jurisdiction of the littoral states to establish the regime of the communicating Straits, in the interest of international cooperation and international trade commercial ships of other nations ought to be admitted and granted freedom of entry, exit, and passage (outside internal waters and prohibited zones).¹⁵⁵

The character of the seas determines the regime of the straits. Soviet authors have recently been unanimous in the opinion that straits and canals linking open seas are accessible to both war and commercial ships of all nations, and are governed by the law of nations, while straits leading from closed seas are subject to the regime agreed upon by all littoral states of a given closed sea. This applies even in cases when such straits and canals are under the jurisdiction and within the territory of a single state. Specifically, the Baltic and Turkish Straits belong to that category.¹⁵⁶

d. *Soviet Practices in the Far Eastern Seas*

(1). *Control of Fisheries*

The Soviet government, adhering formally to the principle of freedom of the seas, has never claimed special rights as regards its security and economic interests in any specific area of the seas outside its territorial waters. It is true that Soviet interpretation of the historic waters concept extended Soviet jurisdiction beyond the usual boundaries; however, officially no other claims were laid in this direction. It is true that at times Soviet scholars have formulated such claims. For instance, Professor Keilin, a leading Soviet authority regarding the law of the sea, has made a statement quoting another writer,¹⁵⁷ that already in 1853 the Russian imperial government considered the Okhotsk Sea as an internal sea of Russia.¹⁵⁸

The situation in the Far East since the end of World War II has changed considerably. Victory over Japan returned to the Soviet Union all her former imperial possessions which she lost to Japan in the Peace of Portsmouth of 1905. Further, the Soviet Union was able to force the Chinese Republic to recognize Russian control of the Chinese Eastern Railway, and she expanded her territorial dominions. As matters stood in 1945, Russia faced no other Far Eastern great power.

The next stage came after the emergence of the People's Republic of

China. The place of Japan as a potential challenger of Russian supremacy in the Northeast corner of the Asian continent was taken by China. The emergence of China as a big Communist power whose wishes would have to influence Soviet policy coincided with a more energetic trend in Soviet policy in the Far East, aimed at strengthening the Soviet hold on the Pacific coast and the Sakhalin and Kurill Islands and at a more effective control of the economic resources in the adjacent sea. Application of the principle of the closed sea to the Okhotsk Sea was suggested only in Krylov's and Durdenevskii's 1947 edition of *Mezhdunarodnoe Pravo*.

One of the important aspects of the balance of power which emerged from World War II was that the Soviet Union could force upon other members of the international community respect and recognition of Russia's special position in terms of military control of the sea between the Siberian mainland, Sakhalin, and the chain of the Kurill Islands. One of the crucial issues in this policy was control of the fishing rights in the Sea of Okhotsk and a determined endeavor to deny the air of that sea and also the Sea of Japan to foreign powers.

Since the very beginning of its existence the Soviet Union was forced to recognize the importance of Japanese fishing interests in the seas washing the coast of western Siberia. A series of agreements beginning with the contract of April 6, 1924, between the Soviet government and Japanese firms for the exploitation of Russian territorial waters, kept economic cooperation between the two nations going, at least in this respect, fairly smoothly. Considering the inferior condition of the Soviet fishing fleet, cooperation with the Japanese was the only available method for the exploitation of the Soviet maritime resources.

This situation lasted pretty well undisturbed until the Japanese defeat in World War II. Occupation of Japan resulted in the control of Japanese fishing while the occupation lasted. After the occupation regime was terminated by the San Francisco Peace Treaty of 1951 the problem of coming to terms with Japan became urgent, particularly in view of the increased pressure of the Japanese fishing industries on the fishing resources of the Okhotsk Sea. The Japanese began to compete with Soviet fishing in the same area and in order to protect its interests, the Soviet side initiated a series of unilateral actions.

The bone of contention between Japanese fishermen and the Soviet government was the preservation of the salmon fisheries which were being overfished by the Japanese, particularly during the period of migration to the Siberian rivers, thus annihilating the conservation measures which the Soviet government was enforcing during the spawning season.

Soviet repressive measures consisted of actions quite illegal from the international law point of view, such as arresting fishing craft and their crews in the open seas. In the period of 1947-1956, according to Japanese sources, Soviet authorities arrested some 450 craft and nearly 4,000 fishermen. On March 21, 1956, the Soviet government enacted a decree which

established an area for the protection of salmon adjoining the Soviet territorial waters, extending from Cape Olyutorskii to the southernmost tip of the Lesser Kurill chain. In that area fishing for salmon during the spawning season (May 15 to September 15) would be allowed only on the basis of special permits issued by Soviet authorities.¹⁵⁹ While this decree was not accepted by the Japanese, it initiated negotiations which finally ended in the signing of the Convention Concerning the High Seas Fisheries of the Northwest Pacific Ocean on May 14, 1956, which included the Sea of Japan, the Okhotsk Sea and the Bering Sea and had the purpose of protecting various genera of salmon. A Japanese-Soviet Northwest Pacific Fisheries Commission was established with the following duties: fixing the total annual catch of a stock of fish; revising the Annex to the Convention, which contains technical rules for fishing operations, such as length and meshes of drifting nets; collecting statistics; proposing scientific studies; and recommending conservation measures.¹⁶⁰ One of the important concessions from the Japanese point of view was the provision of Article 7 to the effect that authorities of the contracting parties may have the right to conduct the search of fishing vessels and arrest the vessels or persons in violation of the Convention. Final disposal of charges against such vessels or persons is within the exclusive jurisdiction of the state to which that vessel or person belongs. However, in spite of repeated protests and complaints by the Japanese authorities, Soviet authorities have not ceased their practice of detaining and arresting Japanese fishermen.¹⁶¹

(2). Protection of Soviet Security Interests

The meaning of Soviet policies in the Far East resulting in the monopolistic control of the fisheries in the Northwest Pacific is paralleled by actions which are a replica of an endeavor to establish control over the air approaches to the Soviet mainland, extending far beyond the Soviet territorial waters. In a number of cases in the Far East American planes flying over international waters were attacked by Soviet military planes.

On September 10, 1953, the American ambassador to the United Nations lodged a formal complaint against Soviet attacks on American planes over the Northwest Pacific and cited a number of cases. The first case took place on November 6, 1951, when an American weather plane was shot down over the Sea of Japan. On October 19, 1952, another plane was lost in the vicinity of Hokkaido. On March 15, 1953, an American aircraft was attacked while en route from Alaska to Japan. On July 29, 1953, a plane was shot down over the Sea of Japan. Finally on September 4, 1954, a U.S. Navy plane was lost over the Okhotsk Sea about 43 miles from the Siberian coast. In each case the Soviet Union rejected demands for damages, claiming that the attacked aircraft violated Soviet airspace and refusing to accept the jurisdiction of the International Court of Justice. Only in one case, involving the shooting of a U.S. Naval aircraft on June 23, 1955, did the Soviet Union agree to pay 50 percent of the American claim.¹⁶²

This series of incidents established an area practically denied to American military aircraft extending far outside the Soviet territorial waters.

Soviet sensitivity to the presence of surface naval force was demonstrated in connection with the exercises of a naval task force in May 1967 when a Soviet destroyer shadowing this force collided with a U.S. destroyer. On this occasion the United States Department of Defense announced that a similar collision occurred in the Sea of Japan in June 1966 involving also Soviet and U.S. ships. These two collisions were instances of similar tactics covering widely scattered areas in the Pacific Ocean, Atlantic Ocean and Mediterranean Sea. The Soviet Union replied to American protests with a note which stated:

"There is no doubt that the actions of United States warships were of premeditated, arrogant nature, and the very fact of the United States-Japanese exercises close to the Soviet shores cannot be regarded as anything else but a premeditated provocative military demonstration.¹⁶³

4. *The Continental Shelf*

On September 28, 1945, President Truman issued a Proclamation on the Continental Shelf. It stated that in the view of the United States the exercise of jurisdiction over the natural resources of the subsoil and seabed of the Continental Shelf by the contiguous nation is reasonable and just for the following four reasons:

1. The effectiveness of measures to use or conserve these resources would be contingent upon the cooperation and protection from the shore;
2. The continental shelf may be regarded as an extension of the land mass of the coastal nation and thus naturally appurtenant to it;
3. The resources under the shelf frequently form a seaward extension of a pool or deposit lying within the territorial limits; and
4. Self-protection compels a coastal nation to keep close watch over the activities off its shores which are necessary for utilization of these resources, i.e., drilling and mining operations.

Following this proclamation a number of Latin American States stated various analogous claims.¹⁶⁴

In 1958 the Soviet government signed and later ratified the Geneva Convention on the Continental Shelf indicating that it accepted this concept as serving its national interests. With the vast unexplored areas of the Arctic, where the policy of the Soviet government is to claim exclusive rights of control and protection and exploitation of the economic resources of the area, the doctrine of the continental shelf presented an opportunity for the privileged status of Soviet economic and security interests in a large part of the Arctic.

The Geneva Convention described the shelf as seabed and subsoil of the submarine areas adjacent to the coast but outside the area of territorial waters, to a depth of 200 meters or, beyond that limit, to where the depth

of the superjacent waters admit the exploitation of the natural resources of the shelf and to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

In practice the doctrine of the continental shelf prevents other countries from undertaking a development of the resources of the continental shelf as control of those resources does not depend on declaration, actual control or exploration. The Convention described the rights of the coastal state over the continental state as sovereign rights. Resources which go with the continental shelf include minerals or living organisms permanently attached to the subsoil.

Exploration and exploitation of the continental shelf must not interfere with freedom of navigation, though the state exploiting its continental shelf may introduce certain restrictions as regards the protection of installations, constructions and devices used for the exploitation of the continental shelf.

On May 5, 1967, the Soviet Union signed a convention with Finland regarding the delimitation of the continental shelf in the northeastern part of the Baltic Sea.¹⁶⁵ It is an extension of the line fixed by the 1964 protocol which revised the division of the Bay of Finland into Soviet and Finnish fishing areas.

5. The Arctic

On September 20, 1916, the Russian Imperial government informed foreign governments that some of the islands of the Arctic region have become a part of the territory of the Russian empire. The Bolshevik regime continued the exploration and discovery expeditions in the Arctic region. On November 24, 1924, Chicherin, People's Commissar for Foreign Affairs of the USSR, in a special memorandum addressed to all states, repeated the notification of the Russian Imperial government of 1916, announcing at the same time the doctrine of sectors or terrestrial gravitation, a new doctrine which recognized the right of a state to territories which do not constitute a part of another state but stand in geographical relationship to that particular state. Applied to the Arctic regions this doctrine meant that all islands in the Arctic north of the coast of the USSR were declared by the Soviet government to be a part of the Soviet territory unless the islands were at that time a part of the territory of another state.

The declaration was prompted by attempts to establish the sovereignty of other countries over some of the islands in the Arctic region. On May 24, 1922, the Soviet government protested against the raising of the British flag by a Canadian expedition on Wrangel Island, which was discovered in the beginning of the nineteenth century and was formally incorporated into Russia.¹⁶⁶ Soviet rights were confirmed by the British assurance that Canadian expeditions were private ventures and that the problem of sovereign rights of Britain were not at issue.¹⁶⁷

A Soviet memorandum of November 4, 1924, claimed as Soviet territory the following islands formerly declared Russian territory by the Imperial regime: Island of General Wilkiki, Zemlia of the Emperor Nikolai II, Island of the Crown Prince Aleksey, islands of Starokadomski, Gerald and Yedinenia, which together with the islands of Novaya Sibir, Wrangel and other, constitute the extension of the Siberian range.

At the same time, the Soviet government pointed out the fact that these islands lay in the area which, according to the Washington Treaty with the United States of March 1867, are situated west of the line which delimits territorial interests of the United States in the area where it renounced all future claims.¹⁶⁸

Thus the dominion of the USSR was asserted over the Arctic lands, which have been discovered but not occupied north of the northern seacoast of the Soviet Union and by implication all other islands not mentioned in the memorandum.

While the direct implications of the 1924 memorandum may have remained somewhat obscure, the Decree of the Central Executive Committee of the USSR of April 15, 1926, has made it quite clear. This decree states:

"... all lands and islands located in the Arctic to the North, between the coast line of the USSR and the North Pole, both already discovered or to be discovered in the future, which at the time of the publication of the present decree are not recognized by the Soviet Government of the USSR as the territory of any foreign state ... are part of the Soviet territory."¹⁶⁹

In other words all lands and islands lying between the Arctic coast of the Soviet Union, the North Pole and the meridians 32 degrees 4'35" East and 168 degrees 49'30" West are Soviet territory.

The Soviet proclamation had its basis both in the Russian-U.S. agreement which delimited the interests of the two countries regarding future acquisitions in the Arctic region, as well as the doctrine of terrestrial gravitation, also known as the sector theory.

Another aspect of the sector theory is the question of the control of the Arctic seas. The decree extended Soviet claims only to elements of terra firma found and to be found in the Arctic region. The seas remained free for navigation of all nations. The first attempt by the Soviet scholars to extend Soviet control of the Arctic Ocean was made by Professor Korovin.¹⁷⁰ Proceeding from the specific features of the position of the Soviet state, Professor Korovin considered that the rights of the USSR in the north polar basin extended not only to small bits of land and a few islands but also to the rest of the remaining polar "region with its floating ice floes, internal lakes, straits ..."

Objections to this theory are met by the fact that northern seas constituting parts of the Arctic are seas of a special type-bay seas or gulf seas which for the most part constitute already historical bays and gulfs of the Soviet Union. As Professor Durdenevski stated:

"The narrowness of the Arctic seas, the difficulty of navigating them, their great significance for air communications, their fishing and seal hunting and their strategic importance for the littoral countries cause intensive attention of the latter and interest in the placing of sectors 'historical' bays and 'international' (national) seas under full sovereignty of the littoral states . . . The opinion that the Siberian seas of the bay type are historically Russian seas has been defended in Soviet scientific circles close to the Arctic Institute and the Chief Administration of the Northern Sea Route . . ." ¹⁷¹

6. *The Antarctic*

In contrast with its position regarding the partition of the Arctic region on the sector theory, the Soviet Union refused to accept any such solution for the Antarctic. It also objected to any preferential claims of various countries to exploitation of marine life or other resources in the Antarctic area. Soviet scholars supporting the Soviet position in this respect claimed discovery and sovereignty rights for certain parts of Antarctica in connection with two expeditions: of Bellingshausen in 1819 and of Lazarev in 1812. Actually neither of these two explorers set their eyes on any portion of the Antarctic territory. Furthermore, discovery alone, as asserted by the Soviet government in relation to the Arctic region, would not be enough to establish sovereignty on any of the parts of the Antarctic. However, these explorations provided a legal basis for Soviet objections to Norwegian claims to some of the parts in Antarctic. Protesting in a note of January 1, 1939, against unilateral actions of Norway regarding Antarctica, the Soviet government reserved its claims in connection with the alleged discoveries of the two Russian explorers.

In 1948 the American government took the initiative to settle the matter of Antarctica on the basis of an international agreement involving all states with claims in Antarctica. In a memorandum of June 7, 1950, addressed to the interested states, the Soviet government took the same position, demanding, however, that the Soviet Union should participate in the conference along with Britain, the United States, France, Norway, Australia, Argentina and New Zealand. The conference should settle the matter in the interest of all states concerned. ¹⁷²

In 1958 the United States called a conference inviting eleven states including the Soviet Union to establish a regime for the Antarctic. Accepting the invitation, the USSR in the letter of June 2, 1958, further developed its position, stating that Antarctica must be used by all countries for peaceful purposes and that the governments, international organizations and nationals of all countries ought to have freedom of research on a footing of equality in all parts of Antarctica. ¹⁷³ The Conference which assembled twelve nations (including all the participants in the Cooperative Program of the International Geophysical Year in Antarctica) worked out a treaty (Antarctic Treaty) which was signed on December 1, 1959.

This treaty has stabilized the situation in Antarctica. In the first place it did not derogate the rights of sovereignty which were already acquired in the past. The Soviet Union, in spite of some vague claims, has not claimed concrete territorial sovereignty rights within the Antarctic area. In the second place it established the principle of permanent (while this treaty is in force) neutralization of Antarctica. Member countries have agreed not to establish military bases or fortifications, carry out military maneuvers, or test any type of weapons. In the third place, it established the principle of freedom of scientific investigation in Antarctica and cooperation towards that end. The treaty provided for the exchange of information, scientific personnel, and programs of research. Finally, while this treaty is in force the twelve member countries have agreed that:

“No acts or activities taking place while the present treaty is in force shall constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of any existing claim, to territorial sovereignty in Antarctica shall be asserted while the present treaty is in force.”

The treaty further provided for periodic meetings of the representatives of the member countries, to evolve measures and policies assuring the enforcement of the treaty provisions and to further the objectives outlined by the treaty. The treaty has also provided for the peaceful settlement of disputes and disagreements between member countries and for a procedure regarding amendments to the treaty, including its revision after the lapse of thirty years.

C. International Waterways

1. International Rivers

a. Soviet Protests Against the Niemen and Memel Regimes

As regards the legal regime of international rivers, the original position of the Soviet government seemed to indicate that the rules of the General Act of the Congress of Vienna were still considered by it to be good. The Act laid down in abstract terms the definition of an international river and listed some of the European rivers as such.

When in 1922 the Soviet government learned that the Allied and Associated Powers sought the consent of the Lithuanian government to the provisions of the Treaty of Versailles to internationalize the Niemen River (Article 342-45 of the Treaty), it protested to the Lithuanian government, insisting that:

“The international character of the Niemen River was recognized more than one hundred years ago in Article 14 of the Act of the Congress of

Vienna, bearing the signature of Russia. It opened navigation on River Niemen to all inhabitants of the former Congress Poland.

"The Russian government always took the position that no international acts, which were originally arrived at with the participation of Russia, can be changed without the participation of the Russian government . . .

"The Russian government is unable to give an immediate decision on the matter, because this problem in all its entirety must without doubt be submitted to the discussion by all the littoral states and even those within whose boundaries the subsidiaries of the Niemen have their source."¹⁷⁴

While the Soviet note regarding the Niemen River seemed to indicate that Soviet Union supported the General Act, it was in fact directed towards a different aim. The Soviet government was concerned with the workings of the system that emerged from World War I which excluded Soviet Russia from the European system.

Soviet protests against the decisions of the principal Allied and Associated Powers regarding the regime of Memel (Klaipeda) port and territory had the same purpose. A Soviet note of December 22, 1922, directed the attention of the great powers to Soviet interests in the Memel regime as it is one of the important ports for Russian exports.¹⁷⁵

In its protest of February 22, 1923, which followed the decision of the principal powers as to the Memel regime, the Soviet Union maintained the same line, insisting that Russia and her allies have a vital interest in the port of Memel and in the waterways regime in Lithuania, as the Russian lumber industry depended upon water transport and Memel was one of the important Russian export ports. Decisions made in the absence of Russia and without her participation were declared to be without legal force.¹⁷⁶

b. *Early Soviet Practice (Border River Regimes)*

Early Soviet treaties dealing with the use of border rivers were a part of the settlement with Russia's neighbors following the October Revolution. On October 22, 1922, the Soviet Union and Finland concluded a convention concerning floating timber in frontier waters running through Russian and Finnish territory.¹⁷⁷ The treaty was modified by the Convention of October 15, 1933, and later upheld under the terms of the Peace Treaty of February 10, 1947 (Article 12).¹⁷⁸

One June 5, 1923, the Soviet Union and Finland concluded a convention on the navigation of Finnish cargo and merchant vessels on the River Neva between Lake Ladoga and the Gulf of Finland.¹⁷⁹

The use of the border rivers for agricultural irrigation was the subject of the Treaty of Friendship between the RSFSR and Persia of February 26, 1921.¹⁸⁰ It established the principle of equality of both parties as regards the use of waters of the border rivers, and provided for the creation of a special commission for water use and other frontier regime questions.

During the following years the question of distribution of those waters

led to difficulties in relations between Persia and Russia, ending finally in an agreement of February 20, 1926, on the use of waters of the River Tejen to the Caspian Sea.¹⁸¹

c. *The Danube*

Control of the Danube was just as much a historical ambition of the Russian Empire, as control of the Turkish Straits and the Black Sea. Freedom of navigation on the Danube has always depended upon Russia's will and her ability to enforce this will.

Following World War I Soviet plans for the Danube were formulated in the Soviet-Turkish Treaty of January 2, 1922. Article 5 states:

"Both Contracting Parties, in their capacity of Black Sea power, agree that no regime for international rivers issuing in the Black Sea may be applied or established without their active participation."¹⁸²

However, as the situation developed, for the first time since the establishment of the international regime for the Danube, Russia was prevented from laying down the principles of the Danubian regime and also was excluded from the administration of its affairs. The original provisions of the Danubian regime was formulated in the Conference of Paris, 1856, which applied the principles of the General Act of Vienna to that important river. At the time of the Congress of Vienna Russia was a riparian state, and the opposition of Tsar Alexander I made it impossible to apply the rules of the Act to the Danube. In 1856 Russia lost the Danubian provinces and the internationalization of the River became possible. Nevertheless, as a great power Russia was admitted to the Danubian Commission in the company of Austria, France, Britain, Germany, Italy and Turkey. Later Rumania was admitted.

Peace treaties "Versailles and Saint Germain" have limited the membership of the Danubian Commissions to representatives of France, Great Britain, Italy and Rumania.

World War I, which changed the balance of power in Europe, provided an opportunity for a fundamental revision of the Danubian regime, on the basis of principles which offered little opportunity to accommodate Russian claims. The Treaty of Versailles ruled that a European Commission for the administration of the Danube from Braila to the sea would be composed of Great Britain, France, Italy and Rumania, and the International Commission for the administration of the Danube from Ulm to Braila would consist of the representatives of all riparian states and of the powers represented in the European Commission.

This state of affairs was confirmed by the Paris Convention of July 23, 1921. It opened a possibility that new powers may be admitted under the condition that they will demonstrate their economic interests in the Danube area. The Soviet Union entertained hopes to be admitted, but as time went on, the Danubian powers showed little willingness to recognize Russian claims.

The decline of the Danubian regime began in 1936 when Germany withdrew from the International Commission. The Sinaia protocol of August 18, 1938, transferred most of the functions of the European Commission to Rumania. In 1940 Germany obtained virtual control of the entire Danubian basin and proceeded to dissolve both commissions, replacing them with a new commission covering the entire Danubian waterway. This commission consisted of representatives of Germany, USSR, Italy and five riparian states. However, the 1940 Bucharest Conference of the eight powers failed to produce a new regime, mainly owing to Soviet pressure for the recognition of her special rights in the maritime Danube area, where the Soviets insisted that a separate administration representing Soviet and Rumanian interests should be in charge. Among other items, the Soviet Union demanded that only Soviet and Rumanian warships would have exclusive right to sail that part of the Danube.

By the end of World War II the USSR obtained full control of the Danube from Linz to the Black Sea, and joint shipping companies with Soviet participation controlled navigation on its entire length. In practice only Soviet-controlled vessels were at that time admitted to navigation along the entire length of the river.

At the Paris Peace Conference of 1946 the issue of the Danubian regime was discussed at length. However, in view of the determined Soviet opposition to settlement of the matter at that time, peace treaties with Bulgaria, Rumania and Hungary merely restated the principle of free navigation along the Danube for ships of all nations, leaving the details of the new regime to a future determination. Molotov, who represented the Soviet Union at the Peace Conference, objected to the continuation of the pre-war system, as it was, in his opinion, a typical institution of international imperialism, and Western insistence on nondiscrimination in the Danubian regime presented a "danger to the independence" of the riparian states.

The new Danubian Convention (Belgrade, 1948) negotiated among the riparians (USSR, Ukraine, Rumania, Yugoslavia, Bulgaria, Hungary and Czechoslovakia) gave no representation to nonriparian interests on the Danubian Commission. The Danube River was declared to be free to the nationals, goods and ships of the signatory powers. Freedom of transit for all ships was also declared. Article 38, paragraph 1 declared however:

"Vessels entering ports for the loading and discharge of goods shall be entitled to use the loading and unloading equipment, storerooms, storing space, etc., on the basis of agreements concluded with the appropriate transport and shipping agencies."

The Danubian regime covered only the Danube proper and none of its tributaries.

As the Soviet delegation argued during the Belgrade Conference of 1948, a distinction must be made between international rivers and non-national rivers (pluri-national rivers in Russian). To the first category belong those rivers which are navigable from the sea. The others are those rivers which

are not directly connected with the sea. This, in the mind of the Soviet delegation, precluded an effort to extend an international administration regime to any of the confluents of the Danube.¹⁸³

In addition to the General Commission, which has no direct administrative power, two separate administrations consisting only of the riparian states were set up to deal with the problems of Iron Gates (Rumania and Yugoslavia) and the maritime section of the Danube (Rumania and the USSR which represents Ukraine). Warships of non-Danubian states were given no access to the Danube, and those of the riparian states were permitted outside their national sections of the river only with the agreement of the states concerned.

Originally the seat of the Commission was set at Galatz. However, after the death of Stalin, on Yugoslav demand, it was moved to Budapest and a more energetic policy for the regulation of Danubian navigation was initiated. New rules concerning navigation were, however, enacted by agreements between the shipping organizations of the member countries, rather than by the international conventions or treaties *sensu stricto*. One of these agreements was the Bratislava Agreement of April 26, 1955, concerning towing, assistance to ships and persons in distress, harbor administration and agency. This agreement resulted in a uniform system of regulations, including charges for various services.

As the terms of the Convention purported to include the Austrian parts of the Danube up to the Ulm, Germany and Austria were potentially entitled to membership on the Commission. An annex to the Convention provided that Austrian membership in the Commission be postponed until the signing of the State Treaty with Austria, while no mention was made of German participation. Since 1957 both Austria and the German Federal Republic have been invited to send observers to the meetings of the Commission, and since 1960 Austria became a full member of the Danubian Commission.¹⁸⁴

2. International Canals

The Soviet Union is not a party to any of the international agreements which established freedom of navigation and its conditions in any of the international canals providing communication between the various parts of the high seas. Some canals exist on Russian territory. One of these is the Baltic-White Sea Canal which can take ships up to 3,000 tons, but this canal is not considered an international waterway which would be affected in any way by the provisions of international law. The same applies to the Volga-Don Canal, which again seems to be of importance for the Russian economy alone.¹⁸⁵ Soviet views on the position of canals in international law emerged only in connection with the Egyptian nationalization of the Suez Canal in 1956. In this connection an international controversy arose, which involved various levels of international decision and discussion. The Soviet position

as regards the regime of those canals which constitute international waterways is that whether a canal is or is not an international waterway is a question of fact and not of legal determination.

In Soviet legal literature one can discover a trend of thought expressed before the Suez crisis, that the international character of canals or a strait should be reflected in a method of their administration. In other words international canals (and for that matter, straits also) ought to be placed under international administration and be removed from the control of a single state. In this category were the Suez and Panama canals.¹⁸⁶ However, when the Suez crisis came, the Soviet position was that there is no contradiction between the international character of the waterway and its control by one state, provided that this state is the local sovereign and not a foreign power. In his speech at the London Conference (August 17, 1957) to settle the Suez crisis, the Soviet delegate suggested that the crisis be settled on the basis of respect for the territorial sovereignty of Egypt and for international obligations as regards the navigation rights of that nation.

The Soviet delegate also maintained the position that the nationalization of the Suez Canal Company was an internal matter, which was outside the jurisdiction and discussion of an international body. In his opinion, the question whether Egypt was able to assure proper use and navigation of the Suez Canal was a domestic matter and the suggestion that the canal be controlled by an international conference of users of the canal was interference in the internal affairs of Egypt and as such was contrary to international law.¹⁸⁷ The same position was maintained by the Soviet delegate in the discussion in the UNO Security Council.¹⁸⁸

3. International Straits

In general terms Soviet legal position as regards straits resembles Soviet legal viewpoints concerning international canals. As Judge Krylov in the Corfu Channel case stated:

“Contrary to the opinion of the majority of the judges, I consider that there is no such thing as a common regulation of the legal regime of straits. Every strait is regulated individually. That applies to the Bosphorus and the Dardanelles, to the Sound and the Belts, to the Strait of Magellan etc. The legal regime of all those straits has been defined by the respective international conventions. The regime of the Corfu Strait has not been juridically regulated.¹⁸⁹

The standard Soviet texts on international law distinguish three categories of straits: national, lying entirely within the jurisdiction of a single state; straits affording access between the open sea and a closed sea, such as the straits leading to the Baltic Sea and the Black Sea; and straits which truly fall within the category of international waterways, connecting two open seas. Only the last category of straits should be open to free navigation by all states, while straits affording access to closed seas should be open

to the merchant vessels of all nations but closed to the warships of the non-riparian powers.

Similar to the position of internal straits is the regime of international straits which are within the territorial waters of one state. In such a case the riparian state may deny passage to foreign men of war.

National straits within the jurisdiction of a single state are a part of inland waters and permission to sail these seas is a matter of domestic legislation. In the category of internal straits are the Kerch straits linking the Azov and Black Seas. The Kerch straits are a typical example of national straits under the exclusive jurisdiction of the Soviet Union.¹⁹⁰

III. LIMITATION OF TERRITORIAL JURISDICTION

The scope of the jurisdictional power of a state over its own territory is at certain times circumscribed because the state may have agreed not to exercise some of its powers in its territory or parts of it (e.g., neutralization and demilitarization), or it may have agreed that another state shall control certain aspects of governmental jurisdiction in a certain area (e.g., a lease) which, as regards other aspects of public power, is still subject to the jurisdiction of the territorial state.

Another form of limitation of territorial jurisdiction may be the result of the presence in the state territory of persons or organizations that are exempt either on the basis of general rules of international law or special agreements from the jurisdiction of the territorial state. Here respect for the sovereign rights and equal status of members of the international community come into play. This respect, of course, accrues to members of the highest authorities of such states (heads of states, ministers of foreign affairs), or organizations representing the sovereign power of such states which are present on the basis of an international agreement (armed forces). Another category of limitations upon territorial jurisdiction may be due to the presence of international organizations whose special status is based upon special treaty obligations.

The status of persons connected with the function of representing sovereign nation states is intimately linked with the law governing diplomacy. This is dealt with in the chapter on "Organs of International Relations." The state, as a member of the international community, appears in international relations as an international person (sovereign capacity). The state, moreover, participates in the capacity of a trader in international trade and commerce. Current international practice tends to distinguish between these two aspects of the state's role in international legal commerce; and while respecting the sovereign immunity of the state, it refuses to draw a distinction between a state and other persons or organizations as regards their participation in civil law or commercial transactions. The Soviet legal system in this connection presents peculiar problems.

A. *Neutralization and Demilitarization*

The most general obligations of this type represent treaties which deal with nuclear weapons. The Test Ban Treaty of 1963 prohibits testing nuclear weapons except for underground tests. The Nonproliferation Treaty of 1968 prohibits the sharing and accepting of nuclear weapons to both nuclear as well as nonnuclear power states who are parties to the treaty. As these two treaties have been adopted by the vast majority of states comprising the international community, they may be regarded as generally accepted standards of conduct, which do not represent a limitation of territorial jurisdiction or sovereign status.

The Soviet Union has been a party to a number of international agreements that have established a regime of neutralization and demilitarization in certain areas in which the Soviet Union was interested either as a neighboring country or as a great power. Treaties regarding neutralization and demilitarization of certain areas, according to Soviet views, are linked not so much with the international status of the states involved, but rather as constitutive of a category of agreements dealing with territorial matters. As a matter of course neutralization is invariably connected with some provisions of demilitarization.

1. *Early Soviet Practice*

In the Soviet-Lithuanian peace treaty of July 12, 1920¹⁹¹ Article 5 provided that if Lithuania should be permanently recognized as neutral, Russia would respect her neutrality and would participate in its guarantees.

On September 27, 1920, the chairman of the Soviet delegation to the Peace Conference with Poland, held in Riga, was instructed to inform the Lithuanian representative there that should Poland follow the recommendations of the Council of the League of Nations and guarantee Lithuanian neutrality, Russia would also accept such analogous obligations. In the opposite case, Russia would be forced to adopt measures for the protection of her armed forces. A Soviet note presented two solutions for Soviet security needs. On the one hand Lithuania could conclude a military agreement with her which would assure unity of action; and on the other hand Russia would unilaterally occupy certain parts of the Lithuanian territory as required by the exigencies of the military situation of Lithuania.¹⁹²

The Preliminary Peace Treaty of October 12, 1920, between Poland and the RSFSR and Soviet Ukraine provided for the creation of a neutralized zone between the armies of the warring parties for the period that peace negotiations were in progress.¹⁹³

The October 14, 1920 Russian Peace Treaty with Finland provided for various measures of neutralization and demilitarization. In the first place Article 12 declared that both parties favored the neutralization of the Finnish Bay and of the Baltic Sea and declared that they agreed to cooperate in

establishment of the regime of demilitarization and neutralization. Finland agreed not to maintain on its Arctic Ocean coast armed and naval vessels with displacement of more than 100 tons, not to establish naval ports and bases, or repair facilities for ships larger than 100 tons. Finland also accepted an obligation to demilitarize the islands of the Finnish Bay which came under her jurisdiction and to take measures to establish an international regime of neutralization and demilitarization of the Island of Hoebland. The Russian government assumed an obligation to participate in the guarantees of the neutralization and demilitarization of this island. Finally, both sides agreed to establish a regime of partial demilitarization on Lake Ladoga, together with its rivers and canal system to include river Neva, and further not to maintain in this area military establishments which might serve the purpose of aggression. However, in case of the neutralization and demilitarization of the Finnish Bay and of the Baltic Sea, Lake Ladoga was also to be subject to similar regime.¹⁹⁴

The Soviet-Persian Treaty of February 26, 1921 laid down the rules of mutual relations between the two powers. The treaty has provided for a system of unilateral Russian guarantees of Persian independence which permitted the Soviet government to introduce its troops into Persian territory in the event a third power (or powers) would intervene militarily in Persia or should seek to establish military bases there against Russia.¹⁹⁵

Another example of the early treaty of neutralization of which the Soviet Union was a party is the Soviet Turkish Treaty of March 16, 1921. According to Annex IB of the treaty, the Turkish government accepted an obligation not to maintain regular troops or erect fortifications in the vicinity of Yerevan over and above those needed for administrative and security purposes.¹⁹⁶

2. The Aaland Islands

The neutralization of the Aaland Islands was one of the conditions of the recognition of the Finnish sovereignty over the archipelago. A treaty concerning the demilitarization and neutralization of the islands was concluded under the auspices of the League of Nations on October 20, 1921. Soviet Russia was not invited to participate in the treaty which in addition to Finland included Britain, France, Italy, Germany, Sweden, Poland, Denmark, Latvia and Estonia. The Soviet Union protested against the fact that it was not invited to participate in the formulation of the Treaty. In 1935, however, when the Soviet Union joined the League, it acceded to the Treaty.

In 1939 the Finnish government requested of the parties of the 1921 Convention and the Council of the League permission to establish defense installations on the southern islands of the archipelago and for the participation of Sweden in the defense of the islands. The Soviet Union protested against this stating that its special interests were involved; and, therefore,

it claimed the right to discuss the matter in direct negotiations with Finland. After the 1939-40 Soviet-Finnish War, in addition to the peace treaty, Finland and the Soviet Union established, in a separate agreement, a special regime for the Aaland Islands which were to be demilitarized and neutralized. In addition a Soviet consulate was established whose main function was to supervise the execution of these provisions.¹⁹⁷

Arrangements of the 1940 treaty were confirmed by Article 5 of the treaty of peace of February 10, 1947.

3. *Spitzbergen*

For some time the Spitzbergen Archipelago was under an international regime which recognized rights of no specific nation to exclusive control. After World War I, Norwegian sovereignty, with Danish support, was recognized over Spitzbergen and on February 9, 1920, Great Britain, France, United States, Denmark, Holland, Italy, Japan and Sweden entered into an agreement with Norway which formally acknowledged the fact of Norwegian sovereignty over the Spitzbergen area.

Russia, at that time under the revolutionary regime, was not invited to participate and its protest against this omission went unheeded. In a note addressed to the participating governments, the Russian government suggested that the earlier regime was based upon a permanent neutralization of the Archipelago and that Russian fishermen and hunters were using some of the islands as bases for their operations.

However, as the protests bore no fruit and the parties to the Paris treaty of 1920 proceeded with its ratification, a note of April 18, 1925, was sent to the French government which was the depository country. Russia acceded to the treaty and recognized Norwegian sovereignty over the Spitzbergen, including Bear Island where Russian coal mines were located. In this note, as well as in the previous correspondence with the Norwegian government, the Soviet government indicated that it would insist upon some changes in the mining act which was a part of the regime established in the Spitzbergen area.¹⁹⁸

In the final period of World War II, the Soviet government sought to acquire a special position in the Spitzbergen regime. According to *Tass* communique¹⁹⁹ the Soviet government initiated conversations with the Norwegian government at the end of 1944 regarding the necessity of revising the February 9, 1920 treaty, basing its claim on the ground of the special security interests of the Soviet Union. At the time, as the *Tass* communique suggested, some arrangements regarding the defense of Spitzbergen were made; however, the revision of the agreement was postponed until the agreement of other member countries to the Spitzbergen treaty was obtained.

Since the Soviet Union was unable to provide for a special treatment of its defense interests in a separate agreement during the ensuing years, the

Soviet government used various occasions to assert its interest in the existing regime which, under the terms of the 1920 treaty, prohibited the use of the Spitzbergen Archipelago for military purposes. The Soviet government protested against the inclusion of the Spitzbergen Archipelago within the area over which the powers of the NATO high command extended, and in 1959 and 1960 raised objections against plans for building airfields in the Spitzbergen Archipelago area.

4. *Antarctic*

An important neutralization provision was included in Article I of the Antarctic Treaty of December 1, 1959, which provided that:

“Antarctica shall be used for peaceful purposes only. There shall be prohibited, inter alia, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons.”

5. *Austria*

All peace treaties which had been concluded following World War II in Europe had contained provisions regarding the limitation of armaments imposed upon the former satellites of the Axis powers. Austria was not a member of the Axis powers and was not therefore a defeated country in the regular sense of the term. Following World War II Austria acquired the status of one of the liberated countries. However, it was recognized that the European political system had to include a set of provisions that would prevent a future combination of Austria and Germany, provisions that would guarantee Austria's independence. The state treaty between the four major Allies (USSR, USA, Great Britain and France) and Austria of May 15, 1955, included military and air clauses prohibiting possession of certain weapons including atomic bombs, manufacture of German types of armaments, and use of certain types of planes and further obligating Austria to cooperate in guaranteeing the disarmament of Germany.

Already prior to the signing of the treaty the Austrian government made a declaration at a conference at Berlin in 1954 to the effect that it would not in the future join in military alliances or permit the establishment of military bases on its territory. Following this declaration and various conversations conducted in Moscow from April 12-15, 1955, between the Austrian and Soviet delegations, the Austrian government accepted an obligation to make a declaration in a form which would obligate Austria internationally to practice neutrality in perpetuity. This declaration was to be submitted, in accordance with the terms of the Federal Constitution, to the Austrian Parliament for decision immediately after the ratification of the State Treaty. After its adoption, the Federal government was to take all suitable steps to obtain international recognition for this declaration.

Further, the Austrian delegation declared that Austria would welcome a guarantee by the four great powers of the inviolability and integrity of the Austrian State territory.

Article 2 of the State Treaty of May 15, 1955, included the declaration of the "Allied and Associated Powers . . . that they will respect the independence and territorial integrity of Austria . . ."

The principal Committee of the Austrian Parliament recommended unanimously the proposed declaration of permanent neutrality. On October 26, 1955, a Constitutional Federal Statute on Austria's permanent neutrality was enacted. Article I of this statute provided as follows:

1. "For the purpose of the permanent maintenance of its external independence and for the purpose of the inviolability of its territory, Austria of its own free will, declares herewith its permanent neutrality. Austria will maintain and defend it with all means at its disposal.

2. In order to secure these purposes Austria will never in the future accede to any military alliances nor permit the establishment of military bases on its territory."²⁰⁰

6. *Demilitarization of Outer Space*

On December 13, 1963, the General Assembly of UNO adopted the Declaration on Outer Space in addition to rules governing national efforts to explore it. The general tenor of the Declaration was such that it seemed to exclude the uses of outer space for military purposes. Thus, the Declaration provides for the demilitarization of outer space in substance, although no direct statement to this effect is contained in the Declaration. The importance of the Declaration lay not so much in its legal force but rather the fact that both the Soviet Union and the United States, the two super powers engaged in the space research on a major scale, had taken part in the preliminary planning of the Declaration and had supported its principles. In this sense the Declaration was a statement if not of legally binding obligations of the two powers concerned, then at least of their avowed policy.

The principles of the Declaration that are important in connection with demilitarization may be summarized as follows: That the exploration of outer space and its use should benefit all of mankind; that outer space is free to all states on a basis of equality and in accordance with international law; and that outer space and celestial bodies are not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means. Further, the "activities of States in the exploration and use of outer space shall be carried on in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international cooperation and understanding."

These general references to the provisions of international law and to the United Nations Charter outline a policy that implies substantially the pre-

clusion of the use of outer space for military purposes such as the stationing of rockets and bombs.^{200a}

7. *Quasi-Neutrality of Finland*

The combination of provisions of the 1940 Peace Treaty which ended the winter war between Finland and the Soviet Union, confirmed by the Paris Peace Treaty and the 1948 Treaty of Friendship and Mutual Assistance, created a special situation between the Soviet Union and Finland, which had some characteristics of an alliance and also features suggesting for Finland status of a neutralized state. The provisions of the Peace Treaty of 1947 severely restricted the size of the Finnish armed forces. It gave the Soviet Union freedom of movement of military forces through Finland by road, railway communications and air. Further, the 1940 peace treaty, confirmed by the Paris Peace Treaty and the 1948 Treaty of Friendship, obligated the Soviet Union and Finland not to enter into alliances or to join coalitions directed against one another. Finland accepted the duty to defend its territory in case of an aggressive war against her or against the Soviet Union, while the Soviet Union accepted the obligation to assist Finland in the defense of her territory.

The Finnish obligations not to conclude military agreements with other countries and to defend her territory are typical of the condition of a neutralized state. However, the neutralization of Finland was linked with the dominant military position of the Soviet Union in that geographic sphere and a general guarantee of Finnish neutrality in respect of other powers is lacking.

B. *Jurisdictional Immunities of Foreign Armed Forces*

1. *Status of the Allied Forces in the Soviet Union*

The German attack on the Soviet Union in June 1941 made the Soviet Union an ally of the Western powers and led eventually to a renewal of her diplomatic relations with Poland and Czechoslovakia. In agreements with the exiled governments of these countries, the Soviet Union permitted the organization of Polish and Czechoslovak armed forces on Soviet territory, using for that purpose deportees, internees and prisoners of the Soviet slave labor camps. Formation of the Polish and Czechoslovak units and conditions of military cooperation between the Soviet Union, Poland and Czechoslovakia respectively, were the subject of special military conventions which determined the legal relations between the Soviet government and the military units of the two allies. The Soviet Union signed a formal military agreement with Poland on August 14, 1941,²⁰¹ and with Czechoslovakia on September 27, 1941. The only text published was the Polish agreement and

this was done through the Polish Embassy in Washington, but there were indications that the agreement with Czechoslovakia was similar in scope and indeed contained similar provisions.

The regime of the Polish army in the Soviet Union was characterized by the unusual condition inhering in the presence of Polish troops in the Soviet Union. The Polish units were organized from prisoners of war and deportees captured by the Soviet Army when the Soviet Union, in cooperation with Germany, had occupied the Eastern part of Poland. Operationally, the Polish army units were to be placed under Soviet command. While on Soviet territory, soldiers of the Polish army were to be subject to Polish military laws and decrees, and Polish military courts had jurisdiction to deal with military offenses and crimes against the establishment, the safety, the routine or the discipline of the Polish army.

For crimes against the Soviet state, soldiers of the Polish army on the territory of the USSR were answerable to the military courts of the USSR.

2. Status of Soviet Armies in the Allied and Enemy Countries

In the final stages of World War II Soviet armies entered the territories of Poland, Czechoslovakia, Norway and China. The coordination of the jurisdictional responsibilities of the Soviet Army Command with those of the local and central authorities of these allied countries was the subject of separate agreements concluded with Czechoslovakia, Norway, Poland and China in that order.²⁰² Soviet entry into enemy territory was, in the first place, based upon the rules of war. Later, the presence of the Soviet troops in various parts of Europe had its juridical foundations in the decisions of the Potsdam Agreement. This agreement established the principles governing the regime for Germany, and in this connection provided a legal basis for the continued presence of Soviet troops in adjacent countries also.

In the Far East, the Soviet Union concluded two agreements with the Republic of China which leased half of the installations of Dairen to the Soviet Union and agreed upon the establishment of a Soviet naval base in Port Arthur on August 14, 1945.²⁰³ These agreements contained no details regarding the regime of Soviet units in Chinese territory except that a Mixed Soviet Military Commission was to deal with questions arising as a result of the joint use of the naval base. These agreements were terminated in 1950 after the change of regime in China and emergence of the People's Republic of China.

A special situation was created in Finland. Following the surrender of Finland in the fall of 1944 the armistice agreement of September 19, 1944, determined the regime of Soviet troops stationed in Finland. In the peace treaty of February 10, 1947, the Soviet Union, in addition to other territorial gains, obtained the right to establish a naval base in Porkkala-Udd. The naval base was relinquished in an agreement of September 19, 1955.

Following the conclusion of the peace treaties with Bulgaria, Hungary and

Rumania, the Soviet Union continued to maintain its garrisons in Poland, Hungary and Rumania in view of the continued occupation of Germany and Austria.²⁰⁴ From the purely legal point of view, the position of Soviet troops in those countries was essentially that of occupation troops who were there because of the continued occupation of Austria and Germany and had no special regime concerning their status in the territories of the countries concerned.

This situation remained in force until the political upheaval in Eastern Europe in 1956. The Soviet Union regularized the status of its forces in Poland, Hungary, Rumania and East Germany through status of forces agreements concluded with the countries concerned.

On the whole, therefore, the Soviet practice seems to follow two lines. The presence of Soviet troops in the territory of allied countries raised the problem of the coordination of activities of national authorities as regards the as regards the general area of cooperation of administrative authorities with the Soviet military command. The agreements with the allied countries listed above distinguished two situations here. First, at the moment of the entry of Soviet troops into the territory of the allied power, the Soviet commander assumed supreme authority and responsibility for all matters concerning the conduct of military operations for a period deemed necessary for the execution of those operations. Second, the government of the allied power appointed a plenipotentiary whose duty it was to establish a direct contact with the Soviet commander and assure the execution of his orders through the local administration. The Soviet commander would, however, control military units of the allied power. Once a part of the territory ceased to be a theater of military operations, the supreme authority was assumed by the allied government whose duty it was to extend assistance to the Soviet commander.

Under the regime thus established all persons who were members of the Soviet force were under the exclusive jurisdiction of the Soviet commander. The forces of the Allied power were under the jurisdiction of their military authority while population of the Allied power was under the jurisdiction of the national authority even for cases involving criminal responsibility for acts against Soviet troops, excluding crimes committed in the theater of operations where criminal justice was the responsibility of the Soviet commander. Disputes in this field were to be resolved by an agreement between the Soviet commander and the plenipotentiary of the allied government.

Provisions of these agreements reflected the fact that the presence of the Soviet troops in Norway, Poland, Czechoslovakia and China were the consequence of the occupation of these countries by the German and Japanese armies. Consequently, the process of liberation was combined with the process of the reestablishment of the national authority.

3. *Status of Forces Agreements*

Until the Polish and Hungarian revolts in the fall of 1956, the Soviet Union considered itself free to move troops within its sphere of influence in Eastern and Central Europe. This right was fully exercised at the time of crisis. Sizable forces were moved into Poland, Rumania, and Hungary. Soviet Army units respected no frontiers, nor did they seek permission from the national governments, or authorization from the Warsaw Treaty Organization. The direct result of such intervention was that the presence of Soviet garrisons in East European states was accepted as inevitable.

The crisis of 1956 forced the Soviet government to seek new justification for the presence of its forces in the territory of other socialist countries, and to determine more precisely the terms of their relations with local authorities and populations.

The Soviet Declaration of October 30, 1956, issued at the height of the Hungarian crisis, brought to light some of the problems caused by the presence of Soviet troops in Eastern Europe. It stated that until that time Soviet troops in Poland were acting as lines of communication for the Soviet forces in Eastern Germany on the basis of the Potsdam agreement. Some other agreements, concluded after the signing of the peace treaties in 1947, were mentioned as legalizing the presence of Soviet troops in Hungary and Rumania. However, all these arrangements needed revision and a new understanding had to be reached covering the presence of Soviet troops in the territories of the Warsaw Treaty powers:

“With a view to establishing the mutual security of the socialist countries, the Soviet government is ready to examine, with other parties to the Warsaw Pact, the question of Soviet troops stationed in the territory of those countries. In this the Soviet government proceeds from the principle that the stationing of troops of one state, which is a party to the Warsaw Pact, on the territory of another member state should take place on the basis of an agreement among all the Pact’s participants, in addition to the agreement of the state on whose territory those troops are stationed, or are planned to be stationed at its request.”²⁰⁵

In the following period the Soviet government concluded Status of Forces Agreements with Poland (December 17, 1956), East Germany (March 13, 1957), Rumania (April 15, 1957), and Hungary (May 27, 1957).²⁰⁶ Of those treaties, the Rumanian agreement is no longer in force; during the 1958 meeting of the Political Consultative Committee of the Warsaw Treaty Powers, the Soviet government announced (May 24, 1958) that it intended to withdraw the Soviet garrison from Rumania.²⁰⁷ On October 17, 1968 the Soviet Union concluded a similar treaty with Czechoslovakia.^{207a} Status of forces agreements are concluded for an indefinite period of time, and may be dissolved at any time by the common agreement of the two parties.

The agreements with Poland, Hungary, East Germany and Czechoslovakia deal with the following problems:

1. The strength and movement of Soviet forces in the host country.
2. The regime of Soviet forces, individual soldiers, members of Soviet military families and civilian employees while on the territory of the host country.
3. Soviet control and use of military installations on the territory of the host country.
4. Jurisdiction of local authorities in civil and criminal matters arising out of, or in connection with, the presence of Soviet troops.
5. Matters subject to the exclusive jurisdiction of Soviet authorities.
6. Settlement of mutual claims.

In principle, the presence of Soviet troops on the territory of the host country does not affect its sovereignty. According to Article 1 of the East German treaty: "The sovereignty of the German People's Republic is not affected by the temporary presence of Soviet forces on the territory of the German Democratic Republic. Soviet forces will not interfere with the internal affairs of the German Democratic Republic and its social and political life."

The four treaties are nearly identical, but with some important differences in detail, particularly as regards the movement of troops stationed in the respective countries. In Poland and Hungary troop movements beyond the areas where they are stationed shall, in each case, require the consent of the government of the host country. Soviet troop exercises or maneuvers outside the area where they are stationed shall take place on the basis of plans arranged beforehand, or agreed upon from time to time. In the German treaty, the Soviet government must obtain only a general agreement as to the areas of training and maneuvers, but none regarding troop movements. Most important, however, are the differences concerning Soviet power to bring troops into the country. According to the German treaty, the USSR must consult with the German government on a change in the strength of the Soviet garrison, or on relocation of Soviet troops in East Germany. In the Polish and Hungarian treaties, these matters are regulated by agreement. The Czechoslovak treaty differs from the other three agreements. It contains no provisions regarding the movement of Soviet troops in Czechoslovakia. It makes the size of the Soviet garrison, however, dependent upon the agreement of the Soviet and Czechoslovak governments.

Furthermore, contrary to the provisions of Article 1 of the German treaty, which guarantees the noninterference of Soviet troops in the internal affairs of the East German Republic, Article 18 of the treaty states as follows:

"In case of a threat to the security of the Soviet forces on the territory of the German Democratic Republic the German Command of Soviet forces in the German Democratic Republic may, in consultation with the Government of the German Democratic Republic, apply measures for the elimination of such a threat, taking into account the actual situation and the measures adopted by the Government of the German Democratic Republic."

The Soviet General Commands in Czechoslovakia, Poland and Hungary

have no such rights. The broader powers of the Soviet General Command in Germany would suggest a different status for Soviet troops in that country. Their present position is linked to their former role as occupation troops after World War II. Another clause, also indicative of the fact that the Soviet-East German Status of Forces Agreement is still connected with the occupation regime, is Article 15 of the agreement by which East Germany guarantees to the Soviets the use of barracks, airfields, and other military and nonmilitary installations and means of transport and communication, according to their status on the date of the signature of the treaty. Similar wording is to be found in the Czechoslovak treaty (Article 3). The Polish and Hungarian treaties have no such provisions.

While the wording of the Hungarian and Polish treaties is almost identical, the Polish government has been given additional guarantees on the movement of Soviet troops in Poland. Under the Hungarian treaty, "the strength of the Soviet forces . . . and the places of stationing shall be determined" by agreement of the two governments. The Polish treaty added to this provision (Article 5) that:

"The mode of entry and exit of Soviet military units as well as of persons forming part of the Soviet troops and the members of the families of these persons into Poland and from Poland, problems concerning the regulations connected with their stay on the territory of the Polish People's Republic, as well as the kinds of documents required, shall be determined in a separate agreement of the Contracting Parties.

Another provision which distinguishes the Polish treaty in an important manner from the other three is Article 15, which states that future agreements shall define: "the lines of communication, dates, order, and terms of payment for the transit of Soviet troops and military supplies across the territory of the Polish People's Republic, as well as for the movement of military transport on the territory of the Polish People's Republic."

This seems to suggest that until the conclusion of this treaty Soviet troops and supplies had been moving over Polish territory not only at will but also at no charge. Article 15 of the treaty permits the Polish authorities to exercise some control over the use of the means of transport, and to coordinate its use by the Soviet army with the economic needs of the country.

As a matter of principle, members of the Soviet forces, members of their families, and civilian employees of the Soviet garrison are under local law and the jurisdiction of the local courts, According to Article 9 of the Polish treaty:

"Problems of jurisdiction connected with the stay of Soviet troops on the territory of the Polish People's Republic shall be regulated in the following manner:

"1. As a rule, Polish law shall apply and Polish courts, the prosecutor's office as well as other competent authorities dealing with crimes and offenses, shall act in cases of crimes and offenses committed by Soviet troops or members of their families on the territory of the Polish People's Republic.

The military prosecutor's office and the military courts of the Polish People's Republic shall be the competent authority to deal with cases of crimes committed by Soviet soldiers.

2. The provisions of Paragraph 1 of this Article shall not apply:

(a) in cases when crimes or offenses have been committed by persons forming part of the Soviet troops or by members of their families only against the Soviet Union and also against persons forming part of the Soviet troops or members of their families;

(b) in cases when crimes and offenses have been committed by persons forming part of the Soviet troops while carrying out service duties.

In cases defined in subparagraphs (a) and (b), Soviet courts, as well as other organs acting in accordance with Soviet law, shall be competent.

3. The competent Polish and Soviet authorities may request each other to transfer or accept jurisdiction in individual cases provided for in this Article. Such requests shall be examined in a spirit of friendliness."

According to the terms of the treaty, the judicial authorities of the Soviet Army have jurisdiction whenever only Soviet interests are involved. However, persons forming part of the Soviet troops (therefore not members of their families) may escape being tried in Polish courts if their offenses were committed while they were carrying out service duties, even when Polish nationals or institutions were the object of the criminal attack.

The elaborate system of distribution of jurisdiction between the judicial, police, and administrative authorities of the host countries and of the Soviet military units called for a good deal of collaboration between the Soviet military and the local authorities. In order to regulate in detail various aspects of this collaboration, the Soviet Union concluded with Poland and Hungary (but not with East Germany) separate agreements on mutual legal aid in all matters connected with the presence of Soviet troops on the territory of those countries. These agreements provided in detail for such matters as mutual assistance in various judicial procedures, examination of witnesses, service of documents, procedure and treatment of Soviet personnel in Polish or Hungarian courts, the right to detain and arrest suspects in connection with crimes involving local nationals and Soviet personnel, execution of sentences, and the rights of Soviet public prosecutors to participate in judicial proceedings.

The general tendency is to accord Soviet personnel involved in judicial proceeding the status accorded to the members of the armed forces of the host countries. In no situation shall the local courts be obliged to exercise jurisdiction according to the provisions of Soviet law, which is the law of the forum only when Soviet military courts have jurisdiction. However, at the request of the Soviet authorities or of the authorities of the host country, sentences imposed upon Soviet personnel may be executed in Soviet penal institutions.²⁰⁸

There are two central issues in the agreements dealing with problems of legal aid in connection with the status of forces agreements. In the first place,

legal aid agreements establish the practice of direct contacts between the local judicial, administrative, and police authorities and the Soviet military courts and public prosecutors of Soviet garrisons.

In the second place, the two agreements contain rules governing requests for transfer of cases belonging under the general provisions of the status of forces agreement to the jurisdiction of local or Soviet authorities. Article 5, paragraph 3 of the Hungarian treaty, and Article 9, paragraph 3 of the Polish treaty provide that either Soviet or local authorities „may request each other to transfer or accept jurisdiction over individual cases provided for in the present articles. Such requests shall be given favorable consideration.”

Under the terms of the Hungarian Legal Aid Agreement (Article 11), decisions in these matters belong to the highest authorities of the Soviet administration of justice, the military court and the public prosecutor of Soviet troops in Hungary. According to the Polish Legal Aid Agreement (Article 11), Polish provincial courts or public prosecutors, or Polish military courts or military prosecutors, will make requests or issue decisions regarding the transfer or receiving of jurisdiction, while the Soviet military court or public prosecutor for the Soviet army group in Poland will be solely competent to deal with these matters.

C. Leases of Territory

Under the Imperial regime leases of territory from foreign states were characteristic only of Russia's relations with China. Following in the steps of other major powers, Russia obtained concessions and leases from China of Port Arthur, which was made into a naval base, and Dairen, which served as Russia's warm water port in the Far East. Russia lost both ports to Japan during the War of 1904 and regained them following World War II, only to lose them again in 1955 when Communist China forced the Soviet Union to abandon its rights in Port Arthur and Dairen.²⁰⁹

Under the terms of the peace treaty with Finland of March 12, 1940, the Soviet Union obtained Cape Hango and coastal waters in that area for the establishment of a naval base. In the Armistice Agreement of September 19, 1944, which ended the second Soviet-Finnish War as confirmed by the 1947 Peace Treaty, the Soviet Union substituted in place of the Hango base a lease of the Porkkala-Udd district for a military and naval base. In 1955, the Soviet Union gave up the lease and vacated the base²¹⁰ thus ending this lease relationship.

On September 27, 1962, the Soviet Union and Finland signed a treaty providing for a 50-year lease of the Saima Canal and the Island of Malyj Vysockij by Finland.²¹¹ The Saima Canal was an important waterway for Finland when Finnish territory included the city of Viborg. The cession of the Finnish Isthmus to the Soviet Union cut the canal in two, leaving a part

of it in the Soviet Union and part in Finland. With the city of Viborg in Soviet hands, the sea traffic which served Finland had no terminal point. The lease was designed to reinstate the economic function of the Saima Canal for Finland and to replace the loss of the city of Viborg. Specifically the lease covers the Soviet part of the Saima Canal with 30 meter wide land bands on either side of the canal and with 200 meter bands in the vicinity of the technical installations of the canal.

The lease legally resulted in the following changes: that Finnish personnel could administer the installations of the canal according to Finnish rules and that Finland also had the right to use Finnish labor in the construction of the facilities and installations to be established on the leased territory.²¹²

D. Status of International Organizations in the Soviet Union

1. General

Growth and development of the Socialist Commonwealth of Nations made Moscow the seat of a considerable number of international organizations engaged in coordinating cooperation among the socialist states. Their legal status in Soviet territory, including the position of the employees of these organizations, is—according to Article 30 of the 1966 USSR Statute on the Diplomatic and consular missions of foreign states in the USSR—determined by the respective international agreements to which the USSR is a party.

The legal position of governmental delegations visiting the Soviet Union in connection with the activities of international organizations of which the Soviet Union is a member, is described in Article 29 of the same statute:

“Privileges and immunities formulated in the present Statute for the members of the diplomatic personnel of missions, apply to representatives of foreign states, to members of the parliamentary or governmental delegations, and, on the basis of reciprocity, to the assistants of the delegations of foreign countries visiting the USSR in order to take part in intergovernmental negotiations, international conferences and meetings or in connection with other official missions . . . The same applies also to the members of the families of above listed persons who accompany them under condition that such family members are not Soviet nationals.”

No international organization of the general type (not limited exclusively to the Socialist Commonwealth of Nations) has a seat in the territory of the USSR. In consequence, although the Soviet Union is a signatory of conventions and agreements determining the status of the United Nations, of specialized agencies, and of the International Court of Justice, these provisions do not constitute a part of that body of international law which is in force in Soviet territory. When an international organization of the general type holds a meeting in Soviet territory and there are governmental delegations and members of the staff of that organization present, the govern-

mental delegations would come under the aegis of Article 29 of the 1966 Statute, whereas the staff members would come under the provisions of the separate international agreements defining their status, provided, of course, that the Soviet Union is a party to such an agreement.²¹³

2. International Organizations in Moscow

At the present time, Moscow is the seat of the following international organization formed by members of the Socialist Commonwealth of Nations: (1) Council for Mutual Economic Aid (CMEA), (2) Warsaw Treaty Organization and (3) International Bank for Economic Cooperation. Each of these organizations includes representatives of the participating states, members of the organization, and the staff employed by them.

The status of the Warsaw Treaty Organization presents special problems which call for a separate treatment. The organization of the Council for Mutual Economic Aid and the Bank for Economic Cooperation in their internal organization follow the same lines as to their juristic status and the position of their personnel.

Of these intergovernmental organizations, the Council for Mutual Economic Aid was the first to be established (1949). For quite some time its legal position remained undetermined. On December 14, 1959, the member countries—Albania, Bulgaria, Hungary, East Germany, Poland, Rumania, USSR and Czechoslovakia—signed in Sofia a convention concerning the Juridical Personality, Privileges and Immunities of the Council for Mutual Economic Aid.²¹⁴

The Bank for Economic Cooperation was established by the agreement signed in Moscow on October 22, 1963, between the members of the Council, excluding Albania and including the Mongolian People's Republic.²¹⁵ This agreement included also the Statutes of the Bank which described its organization, juridical personality, functions and the legal position of the personnel.

The Agreement on Multilateral Clearing in Convertible Rubles and the Organization of the International Bank for Economic Cooperation, which established the Bank, contains general principles which together with the Statutes of the Bank are dealt with in detail in Chapter VIII.

Article II of the Agreement provided that:

"The International Bank for Economic Cooperation enjoys in the territory of each Contracting Party the legal capacity needed for the fulfillment of its functions and the realization of its purposes.

The Bank, representatives of the member countries in the Council of the Bank, and the officials of the Bank enjoy in the territory of each Contracting Party privileges and immunities necessary for the performance of the functions and the realization of the aims determined by the present Agreement and the Statutes of the Bank.

Legal capacity, privileges, and immunities referred to in the present Article are determined in the Statutes."

The Council and the Bank have juridical personality. The premises of the Council for Mutual Economic Assistance (Articles 2 and 3) have been declared to be inviolable. Its property, assets and documents, wherever located, enjoy immunity from every form of administrative and legal process except where the Council has waived its immunity. The Council is exempt from all direct taxes and duties levied either by state or by local authorities. This exemption does not apply to charges for public utilities and similar services. The Council for Mutual Economic Aid is furthermore exempt from custom duties and restrictions on imports and exports, of articles intended for official use. In respect of communication (Article 3 of the Statutes) the Council is accorded in the territory of each member country a treatment not less favorable than that enjoyed by diplomatic missions in that country in the matter of priorities, rates and taxes on postal, cable and telephone communications.

The privileges of the Bank as an international organization are described in identical terms in Articles 38 and 39 of the Statutes. However, as the Bank is engaged in business activities involving the governments of member countries, Articles 36 and 37 provide for the settlement of disputes arising from activities between the Bank and member countries. Chapter VII of the Statutes dealing with the settlement of disputes provided that (Article 36), "Claims against the Bank may be presented within the course of two years after they have arisen," and (Article 37) "Disputes between the Bank and its clients are subject to arbitration before the Tribunal selected from among the already established institutions or established by the parties for each individual base. In the absence of agreement, the dispute goes to the Arbitration Commission with the Chamber of Commerce in the country where the Bank is established." In this case, the dispute is under the jurisdiction of the Foreign Trade Arbitration Commission established with the Soviet Chamber of Commerce which, like the seat of the Bank, is in Moscow.²¹⁶

3. Personal Immunities

The Highest organs of the Council and the Bank consist of the representatives of member countries who participate in their decisions in that capacity. According to the provisions of the 1966 Statute, representatives of the governments of members countries to international conferences and meetings enjoy privileges usually accorded to members of diplomatic missions in the USSR. According to the Statutes of the Council^{216a} representatives of member countries to organs of the council or to conferences convened under its auspices shall enjoy, provided they are not Soviet nationals, personal immunity from arrest or detention and from judicial process (criminal and civil) in respect of acts done by them in their capacity as representatives; inviolability for all papers and documents; the same custom facilities with regard of their baggage as are accorded to members of comparable rank of diplomatic missions in the country concerned; and exemption from na-

tional service obligations and from direct taxes and duties upon salaries paid to them by the countries which appointed them.

Persons granted privileges and immunities under the provisions of the Convention on the Council for Mutual Economic Aid are classified as representatives. They include all personnel that have an intimate relationship to the business of the organizations attended by the national delegations. According to Article 5 of the Convention, the term "representatives" include representatives to the Council; deputy representatives; heads, members and secretaries of the delegations; advisors and experts.

The Statutes of the Bank determine the position of the representatives of the member countries in identical terms (Article 39). Statutes of the CMEA amplify the provisions of Article 4 by the following general clause:

"In addition to the privileges and immunities specified in paragraph 1 of this article (as described above) representatives of countries to the Council and their deputies shall enjoy the privileges and immunities accorded to diplomatic envoys in the country concerned."

This clause is absent from the Statutes of the Bank.

Both the Convention on the Council and the Statutes of the Bank provide that:

"The privileges and immunities provided in this article are accorded to the persons specified therein solely in the interests of their official functions. Each member country of the Council shall have the right and the duty to waive the immunity of its representative in any case where, in the opinion of that country, the immunity would impede the course of justice and can be waived without prejudice to the purpose for which it was accorded."

In other words the legal basis for the grant of immunities and privileges is functional. They do not rest on any theory of the limitation of the state jurisdictions to persons on its territory owing to the doctrine of extraterritoriality. The provision that privileges of the representative may be waived by the state which he represents is in accordance with the general practice prevailing in international relations. At the same time the wording of the above quoted passage, which occurs both in the CMEA Status Convention—Article 4 (3)—and the Statutes of the Bank—Article 39 (2)—go beyond the usual duties of the state in such circumstances by stating that the state has the duty to waive the immunity where it would impede the course of justice, provided immunity can be waived without prejudice to the purpose for which it was accorded. Although operation of the various organizations set up for the economic cooperation of the members of the Socialist Commonwealth of Nations is based upon the community of purpose and allegiance to the common vision of the future world order, in practice economic interests and policies of the member countries may, and frequently do, clash. In view of the political preponderance of the Soviet Union which provides the main driving force for the realization of the goals of international organizations, "the duty to waive the immunity from local jurisdiction" may indeed be used

as an instrument of international pressure against the weaker members of the Commonwealth.^{216a}

4. *The Status of International Civil Servants in the Soviet Union*

Another area in which there is immunity from local jurisdiction concerns those officials employed directly by international organizations. Nevertheless, not all of them enjoy such privileges and immunities; indeed only those whose functions require it remain outside the immediate reach of the local jurisdiction. As Article 5 of the CMEA Status Convention and Article 40 of the Statutes of the Bank specify, "The privileges and immunities . . . are accorded . . . solely in the interests of the Council and in order to ensure the independent exercise of their official functions."

Neither the CMEA Status Convention, nor the Statutes of the Bank list the categories of employees to whom the immunities are accorded. Their determination is left to the highest authorities of the Council for Mutual Economic Aid and the Council of the Bank. According to the CMEA Status Convention (Article 5):

"The Conference of Representatives of the countries in the Council for Mutual Economic Assistance, on the recommendation of the Secretary of the Council, shall specify the categories of officials to which the provisions of this article shall apply. The names of such officials shall be communicated periodically by the Secretary of the Council to the competent authorities of the member countries of the Council."

According to the Bank Statutes (Article 40) the decision to designate the privileged categories of officials belongs to the Council of the Bank which acts upon the proposals of the Administration of the Bank. And, similarly, as in the case of the Council for Mutual Economic Aid, the chairman of the administration communicates the name of officials to the member countries.

Privileges and immunities of the officials of the socialist international organizations cover these three areas:

1. Immunity from legal and administrative process in respect of all acts performed by them in their official capacity;
2. Exemption from national service obligations, and all direct taxes and duties on the salaries paid to them by the Council;
3. Custom exemptions as regards their personal belongings as are accorded to the diplomatic personnel of corresponding rank in a given country.

As compared to the Bank Statutes, the Convention introduced another category of officials who were accorded wider privileges. The Secretary of the Council for Mutual Economic Aid, for example, occupies a position roughly comparable to that of the United Nations Secretary-General and his deputies enjoy the privileges and immunities accorded to diplomatic envoys in the country concerned.

Privileges and immunities granted under the terms of the Convention and of the Bank's Statutes may be waived when the immunity may impede the

course of justice provided that it can be done without prejudice to the interests of the Organizations concerned. In the case of the lower personnel of the CMEA, the decision to waive belongs to the Secretary of the Council, while as regards both him and his deputy, the right to waive immunity belongs to the Conference of Representatives. In the case of the Bank, the decision to waive the immunity of the lower personnel belongs to the Chairman of the Administration, while as regards the Chairman of the Administration and the members of the Administration, the right to waive immunity belongs to the Council.

The rank and file of the socialist international civil service (with exception of the secretary and his deputies of the CMEA) are not exempt from detention and arrest. Their personal immunity is limited to legal and administrative process in connection with acts performed by them in their official capacity. Consequently, one might presume that the instances in which immunity may be waived may concern only cases when the relevance of the act to the official responsibilities of the official is in doubt, or when it is not in doubt but the local authority asserts that criminal or administrative measures shall not affect the interests of the international organization itself.

As the Bank and the Council employ persons of different nationalities, the question of the position of the members of the socialist international civil service on the territory of their own countries arises. The Convention and the Bank Statutes provide that immunities from taxes and exemption from the national service obligations do not apply to the employees who are nationals of the country on whose territory they are employed. However, they are still granted immunities from legal process in connection with the performance of their official functions. Provisions regarding the waiving of such immunities apply equally to native members of the international civil service of the Socialist Commonwealth of Nations.^{216b}

E. Sovereign Immunity of the Trading State

Considerable restriction upon the application of foreign law to international commerce results from the Soviet doctrine that sovereign immunity attaches to the activities of the Soviet government abroad. It is claimed that this applies to all situations, irrespective of the nature of the legal relationship, to which the Soviet government is a party. In all such situations the Soviet state must be sued in Soviet courts, and recovery of claims against it must be adjudged according to Soviet laws. This in particular applies to all situations where the Soviet Union is a party to civil law transactions, in which, through its agents abroad, it buys and sells, contracts loans and obtains credit and generally engages in activities which are part and parcel of normal international commerce.

The principle of sovereign (judicial) immunity is also sustained with regard to the position of foreign states in Soviet territory. Article 256 (b) of the

Code of Civil Procedure of the RSFSR 1923 (and the corresponding articles of the other procedural codes of the union republics) stated only that: "Arrest and levy of execution upon property belonging to a foreign state may be effected only upon permission being obtained in each individual case in advance from the Council of Ministers of the USSR." In the modern version, as formulated by Article 61 of the Principles of Civil Procedure of 1961, judicial immunity of foreign states is stated as follows:

"No action may be brought and secured against a foreign state nor may execution be levied on the property of a foreign State within the USSR without the consent of the appropriate authorities of such State.

"The accredited diplomatic representatives of foreign States in the USSR and other persons indicated in the corresponding laws and international conventions, are subject to the jurisdiction of the Soviet court in civil cases only within the limits laid down by the rules of international law or by conventions with their respective States.

"Where a foreign State does not guarantee the same judicial immunity for the Soviet State, its property or representatives, as laid down in the present article in favour of foreign states, their property or representatives in the USSR, the Council of Ministers of the USSR or other authorized body may prescribe the application of corresponding measures in relation to such States, its property or representatives."

The basis of the Soviet claim for sovereign immunity of the Soviet state abroad is the reciprocity principle. At the same time, however, it is clearly seen that the claim to sovereign immunity under Soviet conditions represents a matter of different proportions than in the free economy countries.

The matter is mitigated somewhat by the fact that foreign trade relations, since 1935, have been handled mostly by the special foreign trade associations, which are endowed with separate juristic personality, and are legally not identical with the Soviet state. In respect of their assets, particularly those being abroad, the character of state property is not insisted upon. As such, neither the foreign trade association, nor their property are considered covered by sovereign immunity, and such property is liable to execution. Execution in the Soviet Union is governed by Soviet law, while execution on property abroad is subject to foreign law.

This exception to the rule, which is not absolute²¹⁷ does not, however, extend to commercial shipping. A Soviet treatise on maritime law interpreted the provisions of Article 239 of the Soviet Merchant Shipping Code, which exempts governmental ships from arrest and seizure for satisfaction of private claims, as follows:

"Regulations, which deal with the manner of arrest and seizure of ships refer only to privately owned ships, and also to foreign owned vessels which visit Soviet ports. They do not apply to ships which belong to Soviet governmental institutions and enterprises, and, on condition of reciprocity, to ships of foreign governmental institutions and enterprises, that is when the

foreign state recognizes and honours the immunity of Soviet sea going vessels.”²¹⁸

The real difficulty in connection with the Soviet claim to extend sovereign immunity to state business activities arose in connection with the Soviet practice of appointing a special trade delegation in addition to normal diplomatic representative. According to the Act on Trade Delegations and Commercial Agencies of the Union of the Soviet Socialist Republic of September 13, 1933²¹⁹ governmental agencies abroad in charge of the governmental monopoly of foreign trade are responsible for the following functions: they

“... represent the interests of the Soviet Union in the field of foreign trade and promote the development of trade and other economic relations between the Soviet Union and the country where they are accredited; regulate foreign trade of the Soviet Union with the country where the commercial delegation is accredited; handle foreign trade of the Soviet Union with the country where the commercial delegation is accredited.”

While some of the functions are reminiscent of the usual duties of the commercial attaches or consular officers, the business aspect of the activities of the Soviet Commercial Representations abroad caused a good deal of difficulty. It conflicted with the general rule of international law that diplomatic privileges are not granted to state agents engaged in trade relations.²²²

After some initial difficulties with the German and British governments the Soviet Union initiated the practice of including in its trade agreements provisions concerning the status of the commercial representations of the Soviet Union accredited in foreign countries.

The position of the Commercial Delegation is defined with reference to two principles. They are accorded the status of a diplomatic mission either separate from the diplomatic representation, or as a part of it. As such, they enjoy all the privileges accorded to a diplomatic mission. As to their activity in the field of foreign trade operations, and in particular in connection with contracts concerning sale and purchase of goods to and from foreign firms, they are subject to the jurisdiction of local courts and to the rule of foreign law. The property of the Soviet state, commodities, sums of money, and claims on other merchants in the receiving country are subject to execution for claims against a Soviet commercial representative. Thus, contrary to the initial insistence of the Soviet government that Soviet commercial delegations and their foreign trade transactions be covered by the diplomatic immunity, Soviet treaty practice took the opposite course, and such delegations are subject to local jurisdiction and local law.

In trade relations with other socialist countries, the claim to sovereign immunity lost its meaning and practical significance. In the first place, the economic organizations of socialist states engaged in trade operations are governmental organizations. Should the principle of sovereign immunity be followed as strictly as in relations with the free economy countries no adjudication of disputes would ever be possible. The solution was found in

the strict observance of the rule that trade is the exclusive responsibility of the trading organizations, which are not parts of the official governmental apparatus of the socialist countries. In addition, Soviet trade and navigation agreements, as well as the General Conditions of Delivery of 1958, which are a code of foreign trade transactions between the socialist countries provide for the submission of litigation between the trading countries to the jurisdiction of commercial arbitration tribunals established for that purpose.²²¹

Soviet claims to the extensive interpretation of the doctrine of sovereign immunity were challenged by the growing tendency in the international community at large to restrict its application. The new doctrine of functional immunity was based on the theory which limited the extent of diplomatic and sovereign immunity according to the needs of the function. In this connection, Italian and French courts began to restrict Soviet claims to immunity, particularly in cases involving Soviet ships in foreign ports. In a number of cases the French courts rejected Soviet claims to exemption from jurisdiction as the ships were the property of a governmental organization, which was not connected with the official business of the state, and was set up for trade and commercial activities.²²² The Italian courts in their turn adopted the line that, although in principle sovereign immunity extended to all acts of state carried out abroad, the fact, however, that its representatives conducted business operations implied a renunciation of that privilege.²²³

A further difficulty in the way of Soviet claims to the sovereign immunity of its ships and business activities arose in connection with the tendency, which became pronounced after World War I, to restrict sovereign immunity, particularly in maritime commerce, to cases involving the public functions of the state. During the war, governments assumed control of their merchant fleets in order to strengthen the war effort and to equalize shipping losses. In the post-war period some of these organizations were continued, which would have resulted in unfair competition with the privately owned companies, if the government shipping organizations were entitled to claim sovereign exemption. The first step in this direction was made in the peace treaties after World War I. Germany and her allies agreed not to claim sovereign immunity for their ships engaged in normal commerce. In 1926 the Brussels Convention on Unification of Certain Rules of Maritime Law provided that, in time of peace, government owned or chartered ships used in international trade were to be subject to normal rules of maritime law and did not enjoy the right of sovereign immunity.

Another attempt to restrict government immunity in maritime trade operations was the 1958 Geneva Convention concerning territorial waters. Articles 20 and 21 of this Convention provided that government ships employed for commercial purposes are liable to arrest in territorial waters in order to satisfy civil law claims pending in the Courts of the territorial power. The Soviet Union, signed this convention, with the reservation that

it did not consider itself bound by these provisions.²²⁴

To summarize, Soviet scholars maintain that the fact that, in a number of agreements, the Soviet Union has submitted its trade transactions to foreign jurisdiction and the rule of foreign law is only an exception to the general rule. In principle, the Soviet Union, as well as any other state, enjoys jurisdictional immunity, even when engaged in business operations and private-law dealings with private persons. At the same time, Soviet treaty practice aims at combining the diplomatic status of the trade mission and its personnel (usually three persons only) with the power of local courts to decide disputes arising from trade operations conducted by Soviet trade missions. These treaties and agreements also give the Soviet trade representations power to agree with their foreign trade partners to change the venue of courts, and to submit their disputes to the arbitration by courts of another country. Thus, in the matter of foreign trade transactions, the position of a Soviet trade delegation is very much the same as that of private merchants.

The situation is different in maritime commerce. There Soviet jurists and the Soviet government maintain the position of total exemption of governmental ships from foreign jurisdiction and application of foreign law.

Although formally the claim to sovereign immunity employs a familiar and well used concept, in Soviet practice and in Soviet conditions, it represents a new broad approach to the extension of the jurisdiction of Soviet law to international commercial relations with other countries, primarily because the other partner is a private person. The Soviet claim to sovereign immunity in this respect is based on the government monopoly of foreign trade rather than on the position of the state as an independent member of the international community. In the traditional social setting, foreign trade is not a public function, although control of foreign commercial relations may represent an important instrument of national economic policy. According to the Soviet system of ideas as to the nature and role of the state, control of foreign trade is one of the main tasks of public policy. The old form, borrowed from international practice, when national sovereignty was the only platform on which nations and countries could cooperate, has been filled with a new content which belongs to the age of a totalitarian form of government and the complete control of social life by public authority.

NOTES

¹ Lenin, 24 *Soch.* 266-67.

² Cf. Article 18 of the 1936 Constitution of the USSR.

³ *VPSS*, 1946.

⁴ 42, *Bolshaja Sovetskaia Entsiklopedia* (2nd ed.) 360.

⁵ Cf. *infra*.

⁶ Article 11, Dek. I, 451.

⁷ *VPSS*, 1941-45, II, 270.

⁸ Der sowjetisch-finnische Pachtvertrag über Saimaa Kanal, *Osteuropa Recht*, vol. 13, 66.

- ⁹ *Bolshaia Sovetskaia Entsiklopedia*, (2nd ed.), 360.
- ¹⁰ *SU RSFSR*, 1917, no. 1, art. 2.
- ¹¹ *Ibid.*
- ^{11a} *SU RSFSR*, 1918, no. 15.
- ¹² *Dok. I*, 59.
- ¹³ *Dok. I*, 76.
- ¹⁴ *Ibid. I*, 75.
- ¹⁵ *Ibid. I*, 71.
- ¹⁶ *Ibid. I*, 93.
- ¹⁷ Note of April 24, 1918, *Dok. I*, 283, and Note of May 26, *Ibid. I*, 321.
- ¹⁸ Cf. the statement of the Soviet Government of April 12, 1918, and the protest of the Soviet Government of April 18, 1918, *Dok. I*, 241, and 248.
- ¹⁹ Cf. notes to the Polish diplomatic representative of March 24, and April 15, 1919, *Dok. II*, 105 and 128-29; see also notes of the Soviet government to governments of Lithuania, Finland and Estonia regarding peace negotiations, *Ibid. II*, 244 ff.
- ²⁰ *Dok. II*, 252.
- ²¹ See e.g. Soviet note to the Lithuanian ambassador, July 22, 1921, *Dok. IV*, 229, and the declaration of the Soviet government addressed to the governments of France, Great Britain and Italy, against the decisions concerning the future of Eastern Galicia, *Ibid. VI*, 222-23.
- ²² Note of the People's Commissariat for Foreign Affairs of the RSFSR, November 11, 1921, *Dok. IV*, 488.
- ²³ *Ibid. VII*, 171-74.
- ²⁴ Kulski, *Peaceful Coexistence* (1959) 397.
- ²⁵ *Dokumenty i materialy po istorii sovetsko-polskikh otnoshenii*, (1963-), III, 221-22.
- ²⁶ *SURSFSR*, 1917 no. 6/90.
- ²⁷ Pipes, *The Formation of the Soviet Union* (1964); 114, Kulski, note 24, 399.
- ²⁸ Pipes, note 27, 152.
- ²⁹ Cf. exchange of population agreements in the chapter on population; cf. Geilke, *Geltende Staatsangehörigkeitsgesetze*, Sowjetunion, (1964) 93.
- ³⁰ *Ved.* 1939, no. 38.
- ³¹ *VPSS*, 1946, I, 348.
- ³² *Ibid. I*, 449.
- ³³ *Ibid. II*, 59.
- ³⁴ Cf. *infra*.
- ³⁵ USSR law of March 31, 1940.
- ³⁶ *VPSS* 1947, II, 51.
- ³⁷ Exchange of notes 26-28 June 1940, *SDD X*, 28-31.
- ³⁸ *VPSS*, (v period otechestvennoi voiny) III, p. 248.
- ³⁹ Dept. of State, *Nazi-Soviet Relations 1939-41*, (1948).
- ⁴⁰ Note 39, p. 101-07.
- ⁴¹ Kulski, note 24, 368 ff.
- ⁴² *VPSS* (Sept. 4-Dec. 31, 1945), 140.
- ⁴³ U.S. Dept. of State publ. Geneva Meeting of Foreign Ministers, October 27-November 16, 1955, 96.
- ⁴⁴ *Pravda*, May 27, 1960.
- ⁴⁵ *VPSS*, 1962, 25-26.
- ⁴⁶ *Dok. I*, 119.
- ⁴⁷ *Polish-Soviet Treaty of August 16, 1945*, Article 1: "In accordance with the decision of the Conference of Crimea the state frontier between the Union of the SSR and the Polish People's Republic is established along the Curzon Line departing from it in Polish favor in some regions from 5 to 8 kilometers to the East, and adding a territory East of the Curzon line to the River Western Bug and River Solokia South of the City Krylov, and a part of the Bielowieza Forest including Niemirow, Hajnowek, Bielowiez and Jalowka." (*SDD XII*, 1956, 76-77).

⁴⁸ *SDD* X, 1955, 25-31.

⁴⁹ Soviet Czechoslovak Treaty of June 29, 1945, (*SDD* XI, 1955, 31-32), Article 1. Carpathian Ukraine, which according to the Czechoslovak Constitution bears the name of the Subcarpathian Ruthenia, which on the basis of the treaty of Saint Germain of Sept. 10, 1919, was included in the capacity of an autonomous territorial unit into the framework of the Czechoslovak Republic, is united, in accordance with the wish expressed by the population . . . with its ancient fatherland the Ukraine and is included into the territory of the Ukrainian Soviet Socialist Republic.

⁵⁰ *VPSS*, 1946, 278.

⁵¹ Cf. Grzybowski, *The Socialist Commonwealth of Nations* (1964) 46-47.

^{51a} *Ved.* 1960 no. 34.

⁵² Goralczyk, *Szerokosc morza terytorialnego i jego delimitacja* (1964) 312, Riesenfeld, *Protection of Coastal Fisheries under International Law* (1942).

⁵³ Avakov, *Pravopreemstvo sovetskogo gosudarstva* (1961).

⁵⁴ *Pravda, Izvestia*, July 21, 1957.

⁵⁵ *Pravda, Izvestia*, January 9, 1958.

⁵⁶ *Mezhdunarodnoe pravo*, 1951, 296; Vishnepolskii, "K. voprosu pravovogo rezhima arkticheskikh oblastei," *SGP* 1952, no. 7; Nikolaev, "O zalive Petra Velikogo," *Mezhdunarodnaia Zhyzn*, 1958, no. 2; Id. *Problema territorialnykh vod v mezhdunarodnom prave* (1954).

⁵⁷ *Pravda, Izvestia*, July 21, 1957.

⁵⁸ *Izveshchenia Moreplavatelam*.

⁵⁹ *Sobr. Post. SSSR*, 1958, no. 16.

⁶⁰ *Dok.* IV, 158-60.

⁶¹ *Ibid.* V, 727.

⁶² *Ibid.* VI, 279-285.

⁶³ *Ibid.* V, 163-66 and VI, 279-285; British subjects were allowed to fish outside the three mile limit "pending the settlement of the question in the shortest possible time by an international agreement" *SDD* I (1924) 172.

⁶⁴ *Dok.* V, 262 and 455-56.

⁶⁴ *Dok.* V, 262 and 455-56.

⁶⁵ *Ibid.* VIII, 463, 719.

⁶⁶ *Ibid.* VIII, 706.

⁶⁷ *Ibid.* VIII, 453.

⁶⁸ *SDD* VI (1931) 148.

⁶⁹ *Ibid.* IX 307.

⁷⁰ *Ibid.* I. 172.

⁷¹ *Ibid.* VI. (1931).

⁷² *British T. S.* no. 36 (1957) Cmd. 148.

⁷³ Butler, "The Legal Regime of Russian Territorial Waters" 62 *AJIL* (1968) 73.

⁷⁴ *Dok.* VII, 572.

⁷⁵ *Ibid.* VII, 50.

⁷⁶ *Ibid.* VI, 268.

⁷⁷ Note of April 13, 1922, *Ibid.* V, 212.

⁷⁸ E.g. Soviet note of Febr. 9, 1923, *Ibid.* VI, 182. See also incident *Sidney Maru* and the intervention of Japanese naval units to enable Japanese citizens to recover their property located on Soviet territory. *Ibid.* VI, 490. Cf. also Soviet note of September 13, 1924. *Ibid.* VII 451.

⁷⁹ *NYT* Sept. 1, 1967.

⁸⁰ *SU RSFSR* (1927) no. 52.

⁸¹ Cf. Grzybowski, *Soviet Private International Law* (1965) 101-04.

⁸² *SZ* (1927) I 1223-24.

⁸³ *SZ* 1935, no. 43/3596.

⁸⁴ *Ved.* 1961, no. 52/538.

⁸⁵ Cf. *infra*.

⁸⁶ *Sbornik soglashenii o vozduzhnom soobshenii mezhdru SSR i inostrannymi gosudarstvami* (1960).

⁸⁷ Cf. *infra*.

⁸⁸ Dept. of State *Bulletin* (1956) vol. 34, 294.

⁸⁹ *Ibid.* vol. 34 (1956) 295.

⁹⁰ *Ibid.* vol. 34 (1956) 293-4.

⁹¹ *Ibid.* vol. 39, 1958.

⁹² *Krasnaya Zvezda*, Feb. 9, 1956; *Pravda*, Oct. 12, 1958.

⁹³ Cf. Articles 7- and 136 of the Aiu Code.

⁹⁴ *Ibid.* articles 77-78.

⁹⁵ Cf. *supra* note 51a.

⁹⁶ *Dok.* IV, 349.

⁹⁷ *Ibid.* IV, 150.

⁹⁸ *Ibid.* VIII, 464.

⁹⁹ *SDD* 14.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ved.* (1961) no. 40.

¹⁰² *SDD* 5.

¹⁰³ *SDD* 14.

¹⁰⁴ *SDD* 2.

¹⁰⁵ *SDD* 14.

¹⁰⁶ *SDD*, XXII, 22.

¹⁰⁷ *SDD* 10.

¹⁰⁸ *SDD* 14.

¹⁰⁹ *Ved.* 1957, no. 26.

¹¹⁰ *SDD*, 14.

¹¹¹ *Ved.* 1957, no. 5.

¹¹² *Cal.* 390.

¹¹³ *SDD* 20, 89.

¹¹⁴ As to the role of the flag in Soviet Maritime law and Soviet Navigation Treaties with other countries see Grzybowski, note 84, 101-04.

¹¹⁵ Grzybowski, note 51, 171.

¹¹⁶ *Ibid.* 117.

¹¹⁷ Egorov, Shmigelskii, *Pravovye voprosy okazania pomoshchy i spasania na more.* (1961); *SDD* 1-2.

¹¹⁸ *Dok.* IX 71.

¹¹⁹ Bering Sea Arbitration, 2 O'Connel, *International Law* (1965) 704.

¹²⁰ Mateesco, *Le droit maritime sovietique face au droit occidental*, (1966). Siling, *Morskoe pravo*, (1964); Shmigelskii, Jasinovskii, *Osnovy sovetskogo morskogo prava*, (1962); Szirmay, Korevaar, *The Merchant Shipping Code of the Soviet Union*, no. 40 (1960).

¹²¹ *Ved.* 1961, no. 10.

¹²² U.S. Dept. of State, *Bulletin*, Vol. 1, no. 785, 51.

¹²³ *Ibid.* vol. 31, 131.

¹²⁴ *Pravda, Izvestia*, August 5, 1954.

¹²⁵ *Pravda, Izvestia*, July 17, 1960.

¹²⁶ *Pravda*, March 14, 1963.

¹²⁷ *Pravda*, March 28, 30, 1963.

¹²⁸ U.S. Dept. of State, *Bulletin*, vol. 47, 1962, 723.

¹²⁹ *Ibid.* vol. 47, (1962) 874.

¹³⁰ 57, *AJIL* (1963) no. 3.

¹³¹ *Pravda, Izvestia*, May 15, 1958.

¹³² *Pravda, Izvestia*, March 5, 1958; cf. Soviet government statement of May 9, 1958; *Pravda, Izvestia*, May 9, 1958.

¹³³ *Izvestia*, June 15, 1962; See Khrushchev letter to the Chairman of the Central

Committee of the Communist Party of Japan, June 26, 1962, *Izvestia*, June 29, 1962.

As Krushchev explained:

"Everybody knows that the USA, Britain and France have carried out several times as many nuclear explosions as the Soviet Union. We have every reason, from the standpoint both of morality and of the safeguarding of our national interests, to want to conduct the same number of test explosions as the Western powers."

(Statement in reply to the joint USA and British statement of September 3, 1961, *Izvestia*, Sept. 9, 1961; *Pravda*, Sept. 10, 1961.)

¹³⁴ Declaration of Tass, *Izvestia*, July 13, 1962.

¹³⁵ The Department of State, *Bulletin* (1946) no. 374, 420; see *ibid.* (1945) no. 333, 766. Cf. Winston S. Churchill, *The Second World War, Triumph and Tragedy* (1953), 669.

¹³⁶ Mr. Bevin's statement in the House of Commons, October 22, 1946, *Hansard*, Vol. 427, 1500.

¹³⁷ *Izvestia*, August 13, 1946; see 167-70.

¹³⁸ The Department of State, *Bulletin* (1945) no. 333, 766. The American Note was dated November 2, 1945. The British Government sent its note pursuant to its agreement in the Potsdam Conference on November 21, 1945. See also Howard, H.N., *The Problem of the Turkish Straits*, (1947) 37. The Department of State *Bulletin* (1946) no. 380, 655. Cf. Grzybowski, "The Soviet Doctrine of Mare Clausum and Policies in Black Baltic Seas," 14, *Journal of Central European Affairs*, (1955) 339-353.

¹³⁹ *Ibid.* (1946) no. 374, 420.

¹⁴⁰ *Hansard*, Vol. 427, 1500.

¹⁴¹ Soviet Turkish Agreements of March 16, and October 13, 1921, and Turkish-Ukrainian Agreement of January 21, 1922. *Izvestia*, September 28, 1946; see also: 193-202.

¹⁴² U.S. Dept. of State, *Bulletin*, vol. 30, 1954, 277.

¹⁴³ *Dok.* VIII, 359, 793.

¹⁴⁴ At the Conference at Lausanne Chicherin declared (Dec. 19, 1922) that already in its conversation with the Western neighbors of Russia, the Soviet government had raised the question of the neutralization of the Baltic. *Dok.* VII 101.

¹⁴⁵ *Nazi-Soviet Relations*, 78, 101, 122-8, 131, 232-242.

¹⁴⁶ *Ibid.*, 252-3. According to these documents, the matter of the participation of the USSR in some mechanism to control the Baltic Straits seems to have been dropped by the Soviets. There are, however, indications that it was not so. Documents reproduced by Churchill in his account of the Second World War suggest the opposite (*Triumph and Tragedy*, Eden's message to the Prime Minister, 516). Cf. Hilger & Meyer, *The Incompatible Allies*, New York, 1953, 324.

¹⁴⁷ *Nordisk Tidsskrift for International Ret. Acta Scandinavica Juris Gentium*, Vol 22 (1952), Fsc. 2-3, Scandinavian Documents, 87-100.

¹⁴⁸ *Fisheries Case* (United Kingdom vs. Norway), Dec. 18, 1951, 132.

¹⁴⁹ *Mezhdunarodnoe Pravo*, 1947, 337-338.

¹⁵⁰ *Ibid.*, 264-265.

¹⁵¹ *Ibid.*, 265-268.

¹⁵² Dranov, "Chernomorskije prolivy" (1948) 51 ff.

¹⁵³ *Ibid.*, 227.

¹⁵⁴ *SGP* (1950) no. 5, 60-61.

¹⁵⁵ *Mezhdunarodnoe Pravo* (1951).

¹⁵⁶ *Ibid.*, 312 Dranov (note 152) 90-94. For the history of the Danish and Turkish Straits, see Bruel, *International Straits*, 1947, Vol. 2.

¹⁵⁷ Ulanovskii, "Territorialnye voprosy mirnogo uregulirovania s Japoniei," (1952) no. 5, 66-70.

¹⁵⁸ Keilin, *Morskoe pravo* (1954), cf. Krylov, Durdenevskii, *Mezhdunarodnoe pravo* (1947).

¹⁵⁹ *NYT* March 22, 1956.

- ¹⁶⁰ *AJIL* 53 (1959) no. 3.
- ¹⁶¹ *Japan Quarterly*, Vol. 9, Jan-March (1962) 122, and April-June (1962) 251.
- ¹⁶² US Dept. of State, *Bulletin* (1954) vol. 31, 417-420; Cf. also US Dept. of State, *American Foreign Policy 1950-1955, Basic Documents*, vol. 2 1972 ff.
- ¹⁶³ *NYT*, May 11 and 14, 1967.
- ¹⁶⁴ *American Foreign Policy 1950-1955*, 1352-54.
- ¹⁶⁵ *Ved.* 1968, no. 13.
- ¹⁶⁶ *Dok.* V 416, and VI 332, 416.
- ¹⁶⁷ *Ibid.* VI, 432.
- ¹⁶⁸ *Ibid.*, VII, 531-32.
- ¹⁶⁹ *SZ* (1926) I, 586.
- ¹⁷⁰ *Sovetskoe Pravo* (1926) no. 3, 46.
- ¹⁷¹ Durdenevski, "Problema pravovogo rezhima pripolarnikh oblastei (Antarktika i Arktika)" *Vestnik Moskovskogo Universiteta* 1950, no. 7, 111-114.
- ¹⁷² *Izvestia*, June 1, 1950.
- ¹⁷³ *Izvestia*, June 4, 1958.
- ¹⁷⁴ *Dok.* V 350.
- ¹⁷⁵ *Dok.* VI, 110.
- ¹⁷⁶ *Dok.* VI, 205.
- ¹⁷⁷ *SDD* 1, 330-36.
- ¹⁷⁸ *SDD* 13, 235-61.
- ¹⁷⁹ *Ibid.* 2, 104-09.
- ¹⁸⁰ *Ibid.* 3, 536.
- ¹⁸¹ *Ibid.* 3, 64-70, *ibid.* IX, 703-711.
- ¹⁸² *Dok.* 5, 9 ff.
- ¹⁸³ *VPSS* 1948 II 190 ff.
- ¹⁸⁴ Grzybowski, Note 51, 140.
- ¹⁸⁵ Baxter, *The Law of International Waterways*, (1964) 11-12.
- ¹⁸⁶ Serezhin, "The World's Sea Routes and International Relations," *New Times*, Jan. 9, 1947, 31.
- ¹⁸⁷ *Pravda*, August 19, 1956.
- ¹⁸⁸ U.N. Security Council, Off. Rec 11th year, 736 meeting, 16 (S/PV. 736 1956).
- ¹⁸⁹ Dissentin Opinion of Judge Krylov, Corfu Channel Case, *ICJ Reports* (1949) 74-75.
- ¹⁹⁰ See Kulski, *Revue de droit international, des sciences diplomatiques et politiques* 272, 379-80 (1953), Dranov, note 152.
- ¹⁹¹ *Dok.* 3, 28.
- ¹⁹² *Ibid.* 3, 218.
- ¹⁹³ *Ibid.* 3, 245.
- ¹⁹⁴ *SDD* 1-2, 130-42.
- ¹⁹⁵ *Ibid.* 1-2, 107-13.
- ¹⁹⁶ *Dok.* 3, 604.
- ¹⁹⁷ Agreement of Oct. 11, 1940, *SDD* 10, 17-19.
- ¹⁹⁸ *Dok.* VIII, 198, 232, 631.
- ¹⁹⁹ *Izvestia*, Jan. 15, 1947; *AJIL* (1955) 191 ff.
- ²⁰⁰ U.N. Yearbook 1963, 101 ff.
- ²⁰¹ General Sikorski's Historical Institute, *Soviet-Polish Relations, Official Documents* (1961), 126-28.
- ²⁰² Soviet Czechoslovak Agreement on Relations between the Soviet Command and Czechoslovak Administrative Authorities after the entry of Soviet troops into Czechoslovak territory, May 8, 1944, *VPSS* (1941-45), 2, 123-34; Soviet Norwegian Agreement, May 16, 1944, *ibid.* 2, 135; Soviet-Polish Agreement of July 26, 1944, *ibid.* 2, 157-59, Soviet-Chinese Agreement of August 14, 1945, *UNTS* 10, 331-33.
- ²⁰³ *UNTS.* 10, 327-331.
- ²⁰⁴ Cf. Article 22 of the Peace Treaties with Hungary and Rumania.

²⁰⁵ *Pravda*, October 31, 1956.

²⁰⁶ English translations of the Soviet Status of Forces Agreements with East Germany, Hungary, and Poland were published in 52 *AJIL* 210-27 (1958); see also Bikov, "Soglashenia o pravovom statuse sovetских voisk za granitsej," *SEMP* 381 (1958).

²⁰⁷ *Materialy soveshchania politicheskogo konsultativnogo komiteta gosudarstv uchastnikov Varshavskogo dogovora* (1958) 5. Status of Forces agreements with Czechoslovakia, *Pravda* October 18, 1968, 207a.

²⁰⁸ Polish-Soviet Mutual Legal Aid Agreement of October 20, 1957, in connection with the temporary stay of Soviet forces in Poland, *DU*, no 37 (1958). Hungarian-Soviet Mutual Legal Aid Agreement of May 27, 1957, in connection with the temporary stay of Soviet troops on the territory of the Hungarian People's Republic, *Ved.* no. 16 (1958).

²⁰⁹ Cf. *supra*.

²¹⁰ Protocol of September 19, 1955. *Ved.* 1955 no. 20.

²¹¹ *Ved.* 1963, no. 36.

²¹² *Ost-Europa Recht* 1/1967, vol. 13.

²¹³ Cf. O'Connel, note 11, 1009 ff.

²¹⁴ *UNTS* 368, 238.

²¹⁵ *Ved.*, 1964, no. 7.

²¹⁶ See *infra*.

^{216a} Grzybowski note 51, 83-85.

^{216a} *Ibid.*

²¹⁷ Cf. Grzybowski, note 51, 34-35.

²¹⁸ Shmigelski, Jasinovski, note 120, 72.

²¹⁹ *SZ* 1933 no. 59.

²²⁰ Bishop, "Immunity of diplomatic establishment: Soviet laws and practice," *Osteuropa Recht* 1959, 10.

²²¹ Grzybowski, Note 81, 94.

²²² *Ibid.* 148-49.

²²³ Cf. Tessini and Malvessi vs. Torgpredstvo, *AJIL* (1955) 98.

²²⁴ Cf. *supra*.

Chapter IV

POPULATION

I. FROM THE INTERNATIONALIST TO THE NATIONAL CONCEPT OF CITIZENSHIP

The First Constitution of the RSFSR of 1918 was proletarian and internationalist. It declared that the Russian Republic was a state of toilers. The Constitution reserved the right to serve under arms only to the toilers. In Article 20, the Constitution accorded all political rights to foreigners, members of the working class, or of the peasantry who were not exploiting the labor of others. It authorized local soviets to grant to such foreigners the rights of Russian citizens without any formality. At the same time it deprived Russian nationals, both individuals and certain class conscious social groups, of political rights which these persons or groups could use to the detriment of the interests of the revolution.

In terms of the perspective of the Constitution of 1918, the world represented a single whole in which the revolution, having gained initially a foothold in Russia, was in the process of expansion to other countries. In this situation political rights belonged to the toilers, quite irrespective of their nationality or citizenship. Similarly, members of the hostile classes, as well as enemies of the new order, were deprived of political rights within the new order.

At the time when the First Constitution of the USSR was adopted (Constitution of 1924), hopes for a revolutionary envelopment of the world were rather dim. The world, as the Constitution stated, was split into two camps, the capitalist and the socialist. The task of the Constitution was not to provide a base from which the revolution would spread, but rather to unite members of the Soviet family of nations into a union of nations. The achievement of the revolution was said to be "mutual trust and peace, national liberty and equality, peaceful coexistence and brotherly cooperation of nations." The union of Soviet nations was to serve as the basis for a union of the working class of the republics into one socialist family. The legislative powers of the Union included "fundamental legislation as regards the union citizenship and in regard to the rights of the aliens."

The 1924 Constitution with its internationalist phraseology still contained no provisions regarding the position of the Soviet citizen within the framework of the Soviet Union. That aspect of Soviet constitutionalism was provided in the Constitution of 1936, which in a separate chapter(10) dealt

with the rights and duties of the citizens as legal foundations for individual and collective existence in the Soviet society. Among the powers exercised by the Union was legislation on the citizenship of the Union and legislation on the status of aliens.

As World War II was launched, the Soviet Union adopted the ethnic principle primarily as the basis for the division of the territories in the area between Germany and Russia. Thus, certain nations, Czechoslovakia, Hungary, Poland and Rumania, were placed within the German sphere of influence. Other areas inhabited by nationalities, like the Ukrainians, Bessarabians, Byelorussians, Baltics (Estonians, Lithuanians and Latvians) and Finns, fell within the Soviet sphere of influence. The ethnic principle (sometimes presented as the historical principle) served to delimit the extent of the spheres of Russian and German interests. The ethnic principle as the justification of Soviet territorial acquisitions received a new lease on life, following the German attack upon the Soviet Union in June, 1941, and became one of the chief foundations for the legalization of the territorial gains in the period of Soviet-Nazi collaboration, and additional conquests following the German defeat.

II. EVOLUTION OF SOVIET CITIZENSHIP LEGISLATION

A. *Early Nationality Legislation (The Internationalist Concept)*

Nationality legislation of the Russian empire lacked a single concept of the citizen in relation to which rights and duties were to be established. Neither, was the Revolutionary regime aware of the need to provide the Soviet state with a comprehensive nationality law.

The first decree of the Soviet government on April 1, 1918, relating to nationality was concerned with the acquisition of Russian citizenship by aliens.¹ The law set no conditions for the acquisition of Russian citizenship except the requirement that there were no criminal proceedings in progress against the applicant. The power to grant Russian citizenship belonged to the local Soviet. By way of exception, the April 1, 1918, decree permitted naturalization of aliens even when they lived abroad.

The Constitution of July 10, 1918, (RSFSR) went even further in asserting the class approach to the nationality question. Russian citizenship was, in fact, granted to all foreigners who met certain conditions. As Article 20 of the Constitution stated:

"In accordance with the principle of the solidarity of the toilers of all nations, the RSFSR grants all political rights of Russian citizens to foreigners living in the territory of the Russian Republic, who are toilers and members of the working class, or of the peasantry which does not exploit the labor of others, and accords to the local Soviets the power to grant to such foreigners

access to the rights of Russian citizenship without any formality.”

For quite some time the question of Russian citizenship was left to pragmatic action and practical solutions. The Constitution of 1918 made legislation on the acquisition and loss of Russian citizenship a matter of jurisdiction of the central authorities. The first family code of September 27, 1921,² dealt with the effect of the marriage of persons having different nationalities, nationality of children from such a marriage, and the effect of adoption upon the child's nationality in the case where such nationality differed from that of the adoptive parents.

The first detailed treatment of naturalization proceedings and the effect of the acquisition of Soviet nationality upon the status of an alien in Russia had to await the time when political conditions in Russia reached a degree of equilibrium and the Russian government was at peace with its neighbors. The decree of August 22, 1921, on the acquisition of Russian citizenship by aliens, was the first instance of detailed legislation in this matter.³ It retained the provisions of the earlier decrees, simplifying the proceedings and providing for no special conditions to be met with as regards the qualifications for naturalization. According to the decree, acquisition of Russian citizenship did not depend upon the loss of foreign nationality, although a naturalized person could not invoke the fact of the other nationality vis-a-vis the Russian authorities.

B. Early Practice of Deprivation of Citizenship

While the struggle with counterrevolution went on, the matter of citizenship and the nationality of the opponents of the revolution was not a pressing problem. At the time, however, when the Bolshevik regime achieved some degree of stability and armed resistance to it ceased, its attention turned to the large numbers of political emigrants, the members of the various resistance groups, who after having been defeated in Russia, sought refuge in other countries.

On October 28, 1921, the Soviet government issued the first Ordinance⁴ which listed five categories of persons that had lost their rights as Russian nationals. The first category comprised those who remained abroad for five years and had received until March 1, 1921, no passports for going abroad or similar identification documents from Soviet representatives. Then there were those who in one way or another defied the Soviet authorities: people who had left Russia after November 7, 1917, without permission of the Soviet government, people who had voluntarily joined the armed forces opposing Soviet power or were active in counterrevolutionary organizations, people who had failed to exercise their right to opt for Soviet citizenship, and people who had failed to register with any of the missions of the RSFSR abroad, disregarding the time limits set and announced for that purpose.

This Ordinance was followed shortly by a decree of December 15, 1921,

which formally declared that those five categories of persons lost their Russian nationality with the modification, that those who had left Russia after November 7, 1917, and those who had opposed the Soviet power could still seek the restitution of their Russian nationality. Another change concerned the date for the first category of persons who had resided abroad for more than five years from March 1, 1922, to June 1, 1922.⁵

While some of the provisions of the two enactments of October 28 and December 15, 1921, took cognizance of the situation as it existed at that time, provisions which were directed against the members of the resistance movements were not meant to be final, but rather as a means of pressure in order to erode the manpower of the counterrevolutionary forces abroad. The Resolution of the Central Executive Committee of the USSR on October 25, 1924⁶ provided that the re-acquisition of Soviet citizenship by persons who had lost Russian nationality would be reserved to the decision of the Central Executive Committee of the Union or of the Union Republics.

On November 13, 1925, the Central Executive Committee and the Council of the People's Commissars of the Soviet Union adopted an ordinance which denied Soviet citizenship to prisoners of war, former soldiers of the Imperial army and of the Red army, as well as all amnestied persons who had served in the white armies or participated in counterrevolutionary uprisings, if they had missed the registration dates established by the Union or republican legislation. In future such persons could apply for Soviet citizenship in the regular manner open to aliens.⁷

While the Soviet legislation of the early period was concerned with the nationality of the counterrevolutionary elements and of all those who for one reason or other refused to recognize the new state of affairs in Russia, it failed to provide for the situation in which Russian nationals had acquired a foreign nationality. On May 27, 1933, an ordinance was adopted by the Central Executive Committee of the Soviet government which declared that all those Russian nationals who left Russia before October 25, 1917, and had acquired a foreign nationality, had lost their Soviet citizenship.⁸

The meaning of these provisions must be seen in the context of the entire legislation on Soviet citizenship of the period. Quite apart from the punitive character of the early legislation which deprived various categories of the Russian nationals of Soviet citizenship, the Soviet authorities were clearly seeking to achieve two goals. In the first place, nationality legislation was designed to induce the return of all those, who although having opposed the revolution, could still be accepted in Russia, thereby reducing the danger of political or military diversion by the white emigration from abroad. In the second place, the propaganda effect of the presence of large masses of political refugees abroad had to be avoided.

While on the whole Soviet legislation of the period was fairly liberal as regards the repatriation of the large masses of the Russian refugees, at the same time the Soviet government avoided the necessity of admitting those who represented the hard core of the counterrevolutionary movement. The

actions of such persons were taken as demonstrative of their political intransigence and also were interpreted in terms of the Soviet nationality legislation of the period as demonstration of an intent to break with the Soviet society and was therefore regarded as an act of renunciation of Russian nationality. Consequently, Soviet nationality legislation attached to the conduct of such persons the same effect as to formal denationalization. Such persons were deprived irretrievably of Soviet citizenship.

C. Uniform Nationality Regime

The first opportunity to introduce a degree of uniformity in the nationality legislation of the Soviet Union was created by the Soviet Constitution of 1924. It gave the government the right to enact "basic legislation in the matter of union citizenship as regards the rights of aliens." Under the terms of the Constitution nationality legislation was within the exclusive jurisdiction of the Union republics. At the same time the Constitution ruled (Article 7) that: "For citizens of the Union republics a single union citizenship is established." In effect, therefore, a citizen of a Union republic was at the same time a citizen of the Soviet Union.

The first comprehensive piece of legislation dealing with Soviet citizenship was the Resolution of October 29, 1924, which sought to systematize the legislation excluding certain categories of Russians from Soviet citizenship. It provided for five different groups who were to be deprived of citizenship. To the first category belong all those who were deprived of Soviet citizenship by legislative acts either of the Union or of the Union republics. In the second class were those who left the country without the permission of Soviet authorities, or having left the Soviet Union legally, did not return or refused to return after having been asked to return by the Soviet authorities. In addition there were persons who had been released in a legal manner from Soviet citizenship, persons who were deprived of citizenship by a judicial decision, and those persons who had opted in accordance with international agreements for the citizenship of another State.⁹

The Resolution of October 29, 1924, perpetuated the institution of punitive deprivation of the Soviet citizenship. Not only the counterrevolutionaries but also all those who had left the Soviet Union, either legally or illegally, and had refused to return when properly called back by the Soviet authorities, were subject to this penalty. Thus, a "defector" institution was born. The aggravated cases of defection were dealt with in the Ordinance of November 21, 1929, which declared that government officials and citizens of the Soviet Union abroad, who had passed to the camp of the class enemies and refused to return to the Soviet Union were outlaws.¹⁰

The Resolution of October 28, 1924, remained law for the Union until replaced by the Citizenship Law of the Union in 1930.¹¹ This act, less than a year old, was replaced in 1931 by a new piece of legislation.¹²

The regime epitomizing the internationalist approach to the question of nationality and Soviet citizenship was carried through by these two pieces of legislation until the law of 1938,¹³ enacted after the Constitution of 1936 was adopted.

Both the 1930 and the 1931 enactments provided that:

“Workers and peasants of foreign nationality who live in the USSR, in order to work, obtain the same political rights and duties which accrue to the citizens of the USSR.”

Article 13 of both acts provided for the naturalization of aliens living abroad, and Article 16 set up a simplified procedure for naturalization of aliens, workers and peasants living in the Soviet Union and for foreigners living abroad who had the right of political asylum in the USSR.

As regards deprivation of Soviet citizenship, the two decrees assigned jurisdiction as regards such deprivation of citizenship procedure and contained no substantive provisions in the matter itself. However, at that time the punitive deprivation of citizenship had already ceased to be a matter of administrative law and had become an institution of criminal law. As the Directives of the Plenum of the Supreme Court of the USSR of September 19, 1934, explained: the matter of defection abroad and of the deprivation of citizenship lay within the realm of judicial power.

III. THE NATIONAL CONCEPT OF SOVIET CITIZENSHIP

A. Nationality Regime Under the Constitution of 1936 and the Nationality Law of 1938

At the time when the 1930 and 1931 laws concerning the nationality of the Soviet Union were enacted, the process of centralization of governmental and political power in the Soviet Union was well underway. The 1936 Constitution and the 1938 Law on Soviet Nationality legalized this process of total subordination of all governmental authorities and social institutions to control from the center.

A single citizenship for the Soviet Union was established. The class principle disappeared from the text of the law. Moreover, the special treatment of privileged classes of aliens, including naturalization proceedings of workers and peasants as well as the status of aliens belonging to the working class in the Soviet Union, was abolished. Naturalization of aliens became the responsibility of the Presidiums of the Supreme Soviets of the Union or of the Union republics, and the release of a person from Soviet citizenship was reserved exclusively for a decision by the Presidium of the Supreme Soviet of the USSR.

The regime established by the 1936 Constitution and the 1938 Citizenship Law¹⁴ has remained in force in its essential form until the present day,

although there have been changes in particulars affecting the status of aliens and their marriages to Soviet citizens.

The 1938 law was the product of the period characterized by the conviction that the Soviet state was the main achievement of the Revolution and the power system which was centered in the state was the most important instrument of progress. The function of law was merely to establish the competencies and the techniques for the exercise of power. This explained the purely formal character of the 1938 law.

The Soviet Citizenship Law of 1938 gave a generic definition of Soviet citizenship. Soviet citizens were those who were subjects of the former Russian empire and had not lost their Soviet citizenship, and those who had acquired Soviet citizenship consistent with procedures prescribed by the law. As the Law of 1938 contained no rules concerning those procedures, it is essential to look to other sources for the rules governing Soviet citizenship.

The 1938 law represents the last stage in the evolution of the Soviet citizenship regime. The vehicle for the change was the growing power of the central government. In the first stage the central government had little control over Soviet citizenship, and matters in this field were handled by the local authorities, with exception of the naturalization of foreigners abroad. The next stage came about as the Soviet republics gained better control of the population. An efficient system of public administration was introduced and jurisdiction in matters of citizenship and the status of aliens was primarily the concern of the governments of the republics. The Union government was only responsible for the international aspects of the nationality regime. In order to put the matter on an orderly basis, in accordance with the existing possibilities of control, the presumption of Soviet citizenship was established for all residents who were not *prima facie* foreign citizens. In the 1938 law this presumption was no longer necessary. In 1932 the system of internal passports was established and internal migrations were largely terminated.

In effect, abolition of presumption did not change the status of foreigners so much as the abolition of another provision, namely, that workers and toilers who were aliens had the political rights and duties of Russian nationals.

The 1938 law did not embody internationalist aspects of earlier legislation. On one hand, it was silent as to the exclusion of the enemies of the revolution from the Soviet citizenship. On the other hand, it did not provide easier rules for the return to Soviet citizenship of certain categories of former Russian subjects and the naturalization of foreigners of a defined class origin. Distinctions indicated by the earlier laws instructing the authorities to extend a more favorable treatment to certain categories of persons were replaced by the broad powers of the authorities to act in the matter of citizenship and nationality without guidelines established by the law.

B. The Ethnic Principle in the International Agreements with Other Countries in the Interwar Period

The international treaties which had provided for the distribution of the population of the former Russian Empire among the states that emerged on its territory, had granted the freedom to opt for the citizenship of any country which was not the country of residence of the persons concerned. It was realized that the territorial division following the long period of Russian imperial domination of these countries had contributed to the intermixing of populations. The purpose of this right of option was to provide for the concentration of the various ethnic groups within their independent states. On one hand, ethnic Russians were given a chance to return to Russia, and on the other hand, ethnic minorities were given a chance to return to their ethnic national territory.

Article 10 of the Supplementary Treaty between Germany and the RSFSR of August 27, 1918, provided:

"With regard to Estonia, Livonia, Courland and Lithuania, agreements are to be concluded with Russia as to the following points:

"1. With regard to the nationality of the former Russian inhabitants of these territories, as to which they must in any case be allowed the right to option and departure."¹⁵

The Peace Treaty with Estonia of February 2, 1920, (Article 4) provided that:

"For one year from the date of the ratification of the present Treaty, persons of non-Estonian origin residing in Estonia and aged eighteen years or over shall have the right to opt for Russian nationality. . . Similarly, persons of Estonian origin residing in Russia may opt for Estonian nationality during the same period and under the same conditions. Each of the two Contracting Governments reserves the right of rejecting such options of nationality."¹⁶

The Peace Treaty concluded on May 7, 1920, between the RSFSR and the Georgian Republic provided in Article 9 that persons of the Georgian ethnic group residing in Russia could opt for Georgian nationality, and persons of non-Georgian groups residing within Georgia could opt for Russian nationality.¹⁷

The Treaty of Peace with Poland (March 18, 1921) was similar. According to its provisions all former Russian subjects, eighteen years of age, who were eligible for registry with the rural municipal or corporate bodies in the territory of Poland, or whose names had been entered into the census books as permanent residents of Poland and who resided in the territory of Poland, had the right to opt for Soviet citizenship. All former Russian subjects of non-Polish origin who did not fall within these categories "Do not need to file a petition for option" for they continued to be Russian nationals. Likewise, the right to opt for Polish nationality by persons residing in Russia was given to persons who either were eligible for registry in rural, municipal or

corporate bodies in the territory of Poland, or whose names were in the census books, or who were descendants of those who fought for the freedom of Poland, or indeed those who by their general conduct, upbringing and use of the Polish language in their daily life, had indicated their allegiance to Poland.¹⁸

The Peace Treaty with Latvia, October 10, 1920,¹⁹ and the Peace Treaty with Lithuania, October 14, 1920,²⁰ stressed the direct link between the person and his membership in urban, rural or corporate bodies in the territory of Latvia or Lithuania. At the same time any such person who wished to retain Russian nationality could opt for it. Similarly Russian nationals living in Russia could opt for Latvian nationality. Moreover, Latvians living abroad with links to the Latvian territory who had not acquired the citizenship of another country were automatically Latvian citizens, but they were entitled to opt for Russian citizenship. According to the Lithuanian peace treaty, all persons of non-Lithuanian origin, who resided in Lithuania and who were in the service of the Russian crown, were not by virtue of the peace treaty accorded the status of Lithuanian citizens.

In addition to treaties dealing with the nationality of persons living on the territory of the newly formed states, there were two treaties dealing with the cession of territories to Finland and Turkey. The treaty of October 14, 1920,²¹ dealt with the territory which was ceded to Finland. It stated that (Article 9):

“Persons of Russian ethnic origin having their domicile in the region of Pechenga (Petsamo) are considered Finnish citizens without any further formalities, with the reservation that persons who are eighteen years of age shall have the right to opt for Russian citizenship within one year of the date of the coming into force of this Treaty.”

In addition, Article 11 of the treaty gave the inhabitants of two rural districts of Eastern Karelia a right to opt for Finnish nationality and to move to Finland. Provisions of a similar nature were to be found in the treaty with Turkey of March 16, 1921,²² with the proviso, however, that there was no limitation as to age. The right of option extended to Russians in Turkey and Turks living in the Batum territory which remained with the Soviet Union.

In the treaties with Estonia, Latvia, Lithuania and Finland, children under eighteen followed the nationality of the father, married women followed the nationality of their husbands, unless it was otherwise agreed between them. In the treaties with Poland, the Baltic states and Georgia, married women were given an independent right of option.²³

C. Repatriation of Refugees and Political Emigres

1. International Agreements and Domestic Legislation of the Interwar Period

Ethnic Russians, who because of World War I and the October Revolution found themselves abroad, fell into two groups:

(1) prisoners of war captured by the armies of the Central Powers, and (2) Russian nationals who were abroad for other reasons. This second group may be roughly subdivided into the following segments. (1) Former Russian nationals who resided in the newly formed republics of Estonia, Latvia, Lithuania, Poland and Finland and who, though failing to be admitted into the status of citizens of the new states, had no desire to return to Russia. (2) Those who fought in the civil war against the Bolshevik regime, and who had left Russia together with the unsuccessful regime. (3) Russian subjects who at the time of the revolution were abroad, either as private persons or on various missions, and decided not to return to Russia. This latter group of Russian emigres consisted of members of the Russian units sent to the West to fight the Germans as a demonstration of allied unity.

Originally the Soviet government offered all emigres of any group the opportunity of a quick return to Russia. The repatriation treaties concluded with the countries in which the emigres were residing included provisions offering them an opportunity of being repatriated with complete immunity.²⁴

What might be described as the second period began during the latter part of 1921. To secure the return of these emigres still remaining in exile the Soviet government was forced to take special measures which they believed would in some way link the Russians living abroad to the new regime in Russia despite their refusal to return home.

The first step was the People's Commissariat for Foreign Affairs Circular of August 11, 1921, which permitted the representatives of the Soviet government abroad to issue provisional identification certificates to persons "declaring themselves Russian nationals."

Then came two decrees; (October 28, 1921²⁵ and December 15, 1921²⁶) which specified three categories of persons that were written off as prospects for mass repatriation and were declared to have lost Soviet citizenship.

These provisions were timed with a series of amnesty decrees which provided a method for a quick return to Russia of those among the Russian political emigration who were members of proletariat as distinct from the bourgeoisie. The technique was to grant amnesty to certain members of the emigration groups combining it with registration and an immediate return to Russia. An example of this was the decree of the All Russian Central Executive Committee of November 3, 1921,²⁷ which granted amnesty to Russian enlisted men of the White armies.

However, the implementation of these provisions, inasmuch as they involved the loss of nationality, was not strict. In 1925 the decree of the Central Executive Committee and of the Council of People's Commissars of

the USSR of November 13, 1925,²⁸ declared that:

“Former war prisoners or interned servicemen of the Imperial and of the Red Army as well as persons who have served in the White Armies, and participated in the counterrevolutionary rebellions and were granted amnesty, shall be considered as having lost USSR nationality if they reside abroad and have failed to register with the Soviet representatives abroad.” However, the decree still opened for these categories of persons a chance to acquire Soviet citizenship in the normal manner and offered a loophole for those who had changed their minds about remaining abroad. In the first place, an exception was made for those who failed to register because there was no diplomatic or consular representation in the country of residence; and secondly, if circumstances beyond the control of such persons prevented them from registering, they were given an additional time limit to effect registration.

2. Repatriation in the Post-World War II Period

In the Post-World War II period, international action regarding the disposition of Russian refugees and emigrants had a precedent in the Fritjoff Nansen Organization. This organization began with the League of Nations' High Commissioner for the Russian Refugees in 1920, who then set up an organization for the refugees. This organization in turn was transformed into the Nansen office in 1930 and remained active until 1938.

On July 5, 1922, a Convention on refugees was signed, and as the number of stateless Russians continued to grow, the powers and the responsibilities of the Nansen Organization continued to grow. A supplementary agreement of June 30, 1928, gave the High Commissioner the power to maintain records of the status and personal circumstances of the refugees under his protection for information and use by the receiving states. In 1924 responsibilities of the office were expanded by including Armenians in the ranks of the Nansen wards.

After the War, the responsibility for the repatriation of Soviet displaced persons was put on UNRRA, which until the end of June, 1947, repatriated 2,034,061 persons from Germany; 78,561 from Austria; and 4,823 persons from Italy. On July 1, 1947, UNRRA's duties in this respect were taken over by the International Refugee Organization which repatriated close to 5,000 persons from the registered mass of 263,947 Russian displaced persons.

World War II initiated and gave new impetus to the recovery of Soviet citizenship by all former Russian subjects who had lost Russian nationality because of legislation enacted after the October Revolution.

After the annexation of Lithuania, Latvia and Estonia, former Russian nationals who had lost their Russian nationality in accordance with decrees of October 28 and December 15, 1921, were given an opportunity to regain their Soviet nationality.²⁹ The decree of March, 8, 1941,³⁰ issued after the annexation of Bessarabia reinstated all Bessarabians to Russian citizenship.

subject to the proviso that they had been Russian subjects at the time of the Revolution; it further provided that the inhabitants of Bessarabia living abroad who were Russian nationals at the time of the Revolution could register as Soviet citizens with a Soviet representative abroad. In practice, however, those who had acquired another nationality were not permitted to register.³¹

Following the termination of the War, the Soviet government made a determined effort to encourage the repatriation of those Russian emigrants who had left the Soviet Union and had renounced or lost Soviet citizenship during the interwar period. A number of decrees provided a new opportunity for the reacquisition of Russian nationality by all those who were Russian subjects on November 7, 1917 (the date of the Revolution) and had lost this citizenship later including their children. Time limits and deadlines for registration of the claims to Russian nationality in Soviet diplomatic and consular missions were set up. Registration had to be accompanied by a request for the restitution of Soviet citizenship and supported by documents indicating former Russian nationality. If these documents were found to be in good order, the Legation had to reinstate in such persons Soviet citizenship, and further to issue the registrant proper documents. Should a person have missed the deadline for such an application, the normal way for the acquisition of Soviet citizenship was still open.

Separate decrees dealt with the various geographic areas and countries. The decree of November 10, 1945, with a deadline set till February 1, 1946, dealt with the Russians in Manchuria.³² The decree of January 20, 1946, with the registration time twice extended till the end of December 31, 1946, covered Sinkiang.³³ The decree of January 20, 1946,³⁴ also applied to Tsientsin and Shanghai.

In Europe separate decrees covered France,³⁵ Yugoslavia,³⁶ Bulgaria,³⁷ Czechoslovakia,³⁸ and Belgium.³⁹

In addition to China, another decree covered Russian refugees in Japan.⁴⁰

The Latin American Decree of March 30, 1948, which included the opportunity to return home and acquire Soviet citizenship, was extended to those emigrants who originated from territories of the Baltic republics and Bessarabia, and who had not availed themselves of the opportunity to acquire Soviet citizenship under the provisions of the decrees which extended Soviet citizenship to the population of these countries following their annexation.⁴¹

The repatriation of the Armenian refugees represented another aspect of the repatriation policy of the Soviet Union.

On the eve of World War I, Armenia was partitioned between three states, Turkey, Persia and the Russian Empire. The majority of the Armenians lived in Turkey, partly in their national territory and partly in a great concentration in Constantinople.

The national renaissance of Armenia in the 19th century brought about a steady deterioration of relations between the Armenian population and the

Turks, with pogroms and mass killings in the Armenian provinces. The changing course of World War I first brought most of Turkish Armenia under the control of the Russian armies. This again caused repressions against the Armenian population and large scale deportations of Armenians to other parts of Turkey. The superiority of Russian arms however ended with the advent of the Revolution, and led to the withdrawal of the Russian armies and the eventual occupation of a considerable part of the Russian Armenia and to the annexation of Kars and Erzerum by Turkey.

Of the Armenian refugees from Turkey, important numbers went to Russia (to settle mostly in the territory of Soviet Armenia), while others spread over the Middle East, southern Europe and even to the American continent. As the dispersal of the Armenians was taking place, the establishment of a national Soviet republic within the framework of the Soviet Union served as a focal point for those Armenians who were not resigned to the fate of being emigrants in foreign lands. This encouraged the tendency in the Armenian refugees to look towards Soviet Armenia as their homeland.

In the years between the wars, the Soviet Union entered into treaties with Greece, in addition to having an understanding with the Refugee Organization of the League of Nations, which brought about a considerable influx of Armenians into the Soviet Union.⁴² On November 21, 1945, the Soviet government adopted a resolution on the general repatriation of Armenians⁴³ from abroad. On October 19, 1946, the Presidium of the Supreme Soviet of the USSR adopted the decree in accordance with which Armenian emigrants were to be granted Soviet citizenship upon arrival in the Soviet Union.⁴⁴

3. Basic Attitudes of the USSR Government as Regards Refugees and Repatriation

Refugees and repatriation represented an important issue in Soviet international policy, demonstrating moreover a basic attitude which differed quite fundamentally from the standards it generally followed in international relations.

After World War I the question of Russian refugees was one of the key problems influencing Russian international policy. The Soviet Union maintained the position that the question of repatriation was a matter of direct concern to the governments involved concerning the country where refugees were located and the country of their origin. In practice, however, the Russian government was unable, following the German surrender, to prevent all repatriation problems concerning prisoners of war (including Russians) being taken over by the Interallied Commission, due to the fact that the Soviet government had no diplomatic relations with the Powers of the Entente. Moreover, Russian interests in the Interallied Commission were still represented by the representatives of the Interim Government. In result masses of Russian prisoners became involved in an ideological tug of war

between the partisans of the new regime and those who supported the fallen government.

Because of its inability to influence the actions of the Interallied Commission, the Soviet government protested against the regime of the prisoners of war and military camps in France and the occupied territories.

One of the most important grievances aired by the Russian government was that the Soviet authorities were refused control over Russian prisoners of war or the camps of the Russian detachments in France, and were unable to prevent the anti-Soviet propaganda spreading there. When the repatriation of the Russian prisoners of war began, the Soviet authorities were unable to prevent that transports, etc., were directed to the ports and areas held by the White armies and various rival regimes. Considerable difficulty ensued because the Soviet government favored the return of the lower ranks, being disinterested in the return of officers, who as a matter of course represented higher classes of the Russian society and were thus potential enemies of the new regime.

During the post-World War II period, the Soviet attitude to the problem of repatriation was changed by the fact that Russian participation in the management of international affairs became far more intimate and the Soviet government's ability to protect Russian interests was correspondingly far more effective.

The establishment of the International Refugee Organization, which took over the activities of UN RRA in respect of refugees and displaced persons, provided a full opportunity for the review of Soviet policy in this connection. IRO was established on December 15, 1946. Prior to that, the Third Assembly of the UNO held a number of meetings to discuss the purpose and the policy of the new organization. As was the case with the previous discussions in the General Assembly and the Economic and Social Council on the question of refugees, the main difference of opinion was between the countries of the origin of the majority of refugees and displaced persons (USSR, Ukraine, Byelorussia, Poland and Yugoslavia), and the countries administering refugee and displaced person camps, (the United States, Britain and France), and countries interested in their resettlement.

Countries of origin maintained that the only practical solution to the refugee problem was repatriation. The Constitution of IRO, they maintained, should provide only for the repatriation of refugees and displaced persons, and should make no provision for resettlement of refugees outside their countries of origin. Persons who refused to return to their countries for political reasons should not, they held, be the concern of IRO. Moreover, effective provision had to be made in the IRO Constitution to ensure that fascist collaborators, war criminals, members of military formations and persons who had left their countries after the war should not receive any aid from IRO.

The countries of origin charged, furthermore, that active propaganda was being carried on in the displaced persons' camps against repatriation by

elements that were hostile to the USSR and to the governments of the other countries of their origin. The Constitution of IRO had, therefore, to make effective provisions for the suppression of such propaganda. They further demanded that the administration had to come under the United Nations Organization with the countries of origin controlling that administration. Furthermore, countries of origin demanded a larger representation on the organs of IRO and that they should be given full lists of the refugees in order to screen those who were war criminals.

Those various complaints were on the whole rejected by the majority of delegates. It was stated that repatriation should not be compulsory, and that refugees should enjoy freedom of speech, provided that adequate facilities be given to the representatives of the countries of origin to present their governments' point of view to all persons in the camps. The existing provisions in the draft of the IRO Constitution were already a guarantee that no war criminals would receive any help. As repatriation had to be voluntary, it was only natural that resettlement of those refugees who were unwilling to return to their countries would also be within the scope of IRO's activities.⁴⁵

Similar complaints were also voiced on other occasions and on other forums. The Soviet delegate, Vyshinskii, declared on March 15, 1947, at the Moscow Conference of Foreign Ministers, that the main reason for the holding out of a great number of refugees in the displaced persons camps in British, American and French zones of occupation in Germany was the political activity of reactionary organizations and their recruitment of displaced persons for the military and semi-military organizations.⁴⁶

As the general relations between the major allies deteriorated, the Soviet delegates articulated the charge that the policy of the Western Allies as regards displaced persons was a continuation of the German policy during the war and was bent upon obtaining a supply of cheap labor for their industries in less desirable occupations.⁴⁷

D. Exchange of Population Agreements

The exchange of population agreements began to be practiced on a major scale in the international relations of the Soviet Union during the World War II period, although there were similar agreements in the earlier period.

1. The Case of the Buriat Tribe

The first Soviet agreement of this type was signed with Mongolia on October 3, 1924. It provided that the Buriat refugee tribe would acquire Mongolian nationality and was at the same time released from Soviet citizenship.⁴⁸ In a sense this agreement was hardly an exchange of population agreement, but sanctioned merely the situation already created by the fleeing of the Buriats from the battle areas to Mongolia.

2. *Swedish Resettlement*

Another minor agreement concerning a return of the ethnic group to another country, although it was legally a part of the population of Russia, was Soviet acquiescence about the return to Sweden of some 900 Swedish colonists from South Russia. Their colonies had been transplanted there from Estonia during the reign of Catherine the Great.⁴⁹

3. *Soviet-German Agreements*

Important bilateral population exchanges were practiced by the Soviet Union during World War II, in connection with the territorial expansion of the Soviet Union and as part of the plan for the political reorganization of Eastern and Central Europe. These exchanges of population agreements were made in two phases.

Initially, the exchange of population agreements made with Germany aimed at the removal of the ethnic Germans from Soviet occupied areas and of Byelorussians and Ukrainians from German occupied areas.

The principle of the population exchanges between the Soviet Union and Germany was agreed upon in the Friendship and Delimitation Treaty of September 28, 1939, (Confidential Protocol) which provided that:

The Government of the USSR shall place no obstacles in the way of Reich nationals, and other persons of German descent residing in the territories under its jurisdiction, if they desire to migrate to Germany or the territories under German jurisdiction. It agrees that such removals shall be carried out by the agents of the Government of the Reich in cooperation with the competent local authorities and that the property rights of the emigrants shall be protected.

A corresponding obligation is assumed by the Government of the German Reich in respect of persons of Ukrainian or White Russian descent residing in the territories under its jurisdiction."⁵⁰

This agreement in principle was followed by Soviet-German population exchange agreement of November 16, 1939, which dealt with Ukrainians and Byelorussians in German occupied Poland and ethnic Germans in Russian occupied Poland.⁵¹

On September 5, 1940, another Soviet-German agreement dealt with the transfer of the German population from Bessarabia and Northern Bucovina which the Soviet Union occupied following its ultimatum to Rumania of June 28, 1940.⁵²

On January 10, 1941, in connection with the Soviet incorporation of the three Baltic republics, the Soviet Union and Germany concluded two separate agreements on the exchange of ethnic Germans living in the territory of Latvia and Estonia and who were not included in the repatriation agreements with Latvia and Estonia prior to their incorporation into the Soviet Union.⁵³

On the same date, a Soviet-German agreement provided for the exchange

of the German population (nationals and ethnic Germans) for the persons of Lithuanian, Russian and Byelorussian ethnic origin from the German Reich into the Lithuanian SSR. Thus, Lithuanians, Russians and Byelorussians were to come from the so-called Suwalki region, part of Poland, and from the port and region of Memel which the Germans acquired from Lithuania.⁵⁴

4. Rumanian Resettlement Case

Following the annexation of Bessarabia and Northern Bucovina in June, 1940, the Soviet Union and Rumania agreed to organize the repatriation of Ukrainians from Rumania into the territories newly acquired from Rumania. While the text of this agreement was not published, Article 5 of the Soviet decree regarding the nationality of persons who became Soviet citizens in connection with the annexation of Bessarabia and Bucovina, specifically refers to it.

"Persons who shall return from Rumania to Bessarabia and Northern Bucovina, after June 28, 1940, in a procedure agreed between the Soviet and Rumanian authorities, shall acquire Soviet citizenship at the moment of their return."⁵⁵

The Soviet-Rumanian agreement ended the first phase of the changes in the population patterns that were related to Soviet territorial expansion.

5. Resettlement Agreements with Poland

The second phase began with the Soviet-Polish agreement of July 30, 1941, following the German attack upon the Soviet Union. The agreement recognized that the Soviet-German Treaties of 1939 relative to territorial changes in Poland had lost their validity. Moreover, the Soviet Union agreed to release all Polish prisoners of war and civilian deportees from Eastern provinces of Poland from prisons, forced labor camps, and places of confinement in rural settlements situated in various parts of the USSR. Furthermore, the agreement permitted the formation of Polish Armed forces in the Soviet Union.⁵⁶

As time went on, however, disagreement arose as to the interpretation of the terms of the treaty, primarily in connection with the right of the Polish authorities to recruit, for the Polish forces, those Polish citizens who had originated in the Eastern parts of Poland, which were annexed by the Union during the phase of Soviet-German cooperation. Soviet authorities began to conscript for the Soviet armies those Polish citizens from the Eastern territories who had been deported from Polish occupied territories, and who were issued Soviet identification documents (a legal requirement under the Soviet law) which stated that they were of Ukrainian, Byelorussian or Jewish ethnic origin. Only ethnic Poles were permitted to join Polish units. In a series of notes the Soviet government claimed that provisions of the Soviet-Polish Agreements of July 30, 1941 notwithstanding the legislation

extending Soviet citizenship to the annexed territories, remained in force. As the Soviet government explained, "the Soviet government was prepared by way of exception, to regard as Polish citizens persons of Polish origin living in the territories of the above-mentioned districts on November 1-2, 1939."⁵⁷

The "ethnic origin" approach formulated at that time served as basis for a series of exchange of population agreements concluded by the Soviet Union with Poland after World War II. The purpose of these agreements was to approximate the ethnic frontiers in Eastern Europe, particularly as regards Poland (but also in other areas) with political boundaries imposed by the Soviet Union on its neighbors.

On September 9, 1944, the Soviet Ukraine concluded a treaty with Poland on the exchange of Polish and Ukrainian populations.⁵⁸ On that same date, an identical treaty was concluded by the Byelorussian SSR.⁵⁹ On September 22, 1944, a similar treaty was concluded by the Lithuanian SSR with Poland.⁶⁰

Prior to the signing of these treaties, the Soviet government passed two decrees concerning the right of certain Soviet citizens to acquire Polish citizenship.

The decree of June 22, 1944,⁶¹ gave the right of changing Soviet to Polish nationality to servicemen serving in the Polish Army in the USSR and persons assisting it in the fight for the liberation of Poland. Article 1 of the decree, by the way of special exemption from Soviet legislation which extended Soviet citizenship to the inhabitants of the former Polish territories, granted that such among them "as are in the service of the Polish Army in the USSR or previously served in the ranks of that army, as well as persons who are rendering active assistance to the Polish army in its fight for the liberation of Poland . . . the right to change their nationality to Polish nationality."

The same right was given generally to Soviet nationals of Polish extraction on the condition of their service in the Polish army and extended to the members of the families of such persons. Another decree of July 14, 1944,⁶² extended the force of the decree of June 22, 1944, to the territory of Lithuanian SSR.

As agreements between Poland and Byelorussia, Lithuania and the Ukraine were not adequate to cover all the classes of persons included in the two decrees of June 22 and July 14, 1944, the Soviet Union and Poland entered into a new agreement on July 7, 1945, which in effect covered the entire territory of the Soviet Union. The treaty also accorded the right of Polish citizenship to persons other than ethnic Poles who had either served in the Polish army or supported its fight for the liberation of Poland. Hence, the press release published in *Izvestia* (July 7, 1945) concerning the agreement of July 6 spoke of the release from Soviet nationality of persons of Polish and Jewish ethnic origin.⁶³

The import of the two decrees of June and July, 1944, was that both in the personnel of the Polish Army and in the Polish Committee for National

Liberation, which assumed the functions of the Polish government following the Soviet breach with the Polish government in-exile, were persons who were Soviet citizens not only according to the Soviet but also Polish nationality legislation. The real purpose of those decrees and of the subsequent agreement was to give those Soviet citizens, who because of their Polish ethnic origin were posted in the Polish army or in the Polish Committee for National Liberation, the right to claim Polish nationality.

Under the terms of the agreement of July 6, 1945, two classes of persons were given the right to elect Polish citizenship. First were those ethnic Poles who lived in the former Polish territories and who on September 17, 1939, (the date of the Soviet attack on Poland) were Polish nationals. In addition, those ethnic Poles who served in the Polish army or supported the Polish struggle for independence, who were not Polish citizens at that date, could also elect to become Polish citizens. Moreover, those Jews who on September 17, 1939, lived in Polish territories annexed by the Soviet Union and who were Polish nationals at that date were also given the right to elect Polish nationality.⁶⁴

In exchange, the Polish government agreed to release persons of Russian, Ukrainian, Byelorussian, Ruthenian and Lithuanian ethnic origin from Polish nationality.

On July 6, 1945, November 25, 1945, and December 14, 1945, Poland signed additional protocols with the Lithuanian, Byelorussian and Ukrainian governments which dealt with some special aspects of the exchange of population agreed to between the contracting parties. Amongst other things, the force of the original agreement was extended to Poles and Jews who lived in the Tchernovitz area (Northern Bucovina), which was never a part of Poland but had been acquired by the Soviet Union from Rumania in June, 1940.⁶⁵

The right to go to Poland or to the Soviet Union was given not only to those who had met the conditions prescribed in the agreements, but to members of their families in the broadest sense, including all those who had lived with them in a common household. The additional protocols provided that parish priests remove religious objects and church equipment belonging to the parishes moving from the Ukraine and Lithuania to Poland.

On February 15, 1951, Poland and the USSR entered into an agreement on the exchange of territories. This was to give the Soviet Union full control of a railway line in exchange for which Poland was given a region with oil and gas deposits.⁶⁶ Both sides evacuated and resettled the populations of both regions.

The last Polish-Soviet exchange of population agreement was concluded on March 5, 1957, following the general political crisis in Eastern Europe resulting from the profound dissatisfaction with the regime of control established in the entire area by the Soviet government.⁶⁷ It was essentially the extension of earlier agreements which aimed at the repatriation of ethnic Poles and Jewish persons who on September 17, 1939, had been Polish

citizens. The agreement was the result of difficulties created by the Soviet authorities in the repatriation process epitomized by a lack of opportunity for repatriation for the inmates of the forced labor camps and deportees who had been sent to isolated localities.

6. Soviet-Czechoslovak Agreement

Ethnic adjustments between the Soviet Union and Czechoslovakia were a far simpler matter. In the annexation of the Subcarpathian Ukraine to the Soviet Union, following Soviet occupation of Slovakia and parts of Czechoslovakia, the Soviet and Czechoslovak governments agreed on June 29, 1945, to the detachment of this area from Czechoslovakia to the Soviet Union. The Ukrainians living in Czechoslovakia and the Czechs and Slovaks living in the annexed areas were given the right to opt for Soviet or Czechoslovak nationality and to transfer themselves to the territory of the country of their choice.⁶⁸

7. Soviet Foreign Ethnic Policy

Soviet policy of population exchanges in connection with the settlement of territorial questions was only partly reflected in its treaties with other countries. It was also supported and frequently actively implemented in cooperation with the allied authorities in the vast area of Central Eastern and South-eastern Europe.

The basic foundations of Soviet action in this connection were found in the decisions made during the Berlin Conference (Potsdam) July-August 1945, which authorized population transfers (ethnic Germans from Poland, Czechoslovakia, and Hungary). In addition, other ethnic groups were removed, including Magyars from Slovakia and Yugoslavia to Hungary, the Czechs and Slovaks from Rumania, the Italians from Yugoslavia, the Yugoslavs from Hungary to Yugoslavia and the Pomaks from Bulgaria to Turkey.

These population movements were clearly undertaken with the specific purpose of creating cohesive ethnic areas coincidental with the political configuration of Eastern and Central Europe. From the Soviet viewpoint this policy was the only available method to achieve firm political solutions for the future. Speaking at the press-conference in London (September 19, 1945) while attending the meeting of the Council of Foreign Ministers, Molotov supported the Yugoslav claims to territories inhabited by Croats and Slovenians in respect of Italy.⁶⁹ During the Paris Peace Conference Molotov in his address during the discussion of the Italian Peace Treaty (August 13, 1946), claimed that territorial ambitions of certain Italian circles had a definite ideological meaning:

"We welcome Italian efforts to achieve a national rebirth. We shall deny, however, that Italian efforts to take control of foreign territories corresponds

to the true interests of Italy. It is well known that efforts of this kind with regard to other nations testify to the presence of the expansionist tendencies of certain narrow circles and in no way express the true national interests of the people, which in the first place consist in the economic revival of internal national forces and in the establishment of good friendly relations with other nations.”⁷⁰

During the same conference the Soviet delegate, Gusev, supported Czechoslovak demand for the repatriation of 200,000 Hungarians from Czechoslovakia:

“The experience of Munich, of the Vienna arbitration and presence of revisionist tendencies in certain Hungarian reactionary circles justify the apprehensions of the Czechoslovak government and explain their endeavor to create an ethnically homogenous state. A decision of this type would remove obstacles in the friendly relations between Czechoslovakia and Hungary, and consequently would be in the interest of establishing true peace in Central Europe.”⁷¹

While on one hand, the absence of national minorities promised the reduction of tensions between national entities in the Soviet sphere of influence, on the other hand, the removal of German and Italian populations was the final stage in a process signifying their decline as potential competitors to Soviet control in this area.

8. Ethnic Policies Within the Soviet Union and the Socialist Commonwealth of Nations

Ethnic consolidation and liquidation of the national minorities seemed to be a policy followed and supported by the Soviet Union both in regard to the structure of its own population and that of the other countries, particularly those within the Soviet sphere of influence. The presence of large German and Italian settlements was not tolerated, and the national mosaic, which was so characteristic of the Central and Eastern Europe, was replaced by ethnic consolidation.

Within the Soviet Union itself and within the immediate circle of the Soviet family of nations, Soviet policy seems to favor a mutual intermingling of peoples and cultures and gradual obliteration of the ethnice boundaries within the Soviet Union. This policy was officially announced in the 1961 Party Program which stated that:

“The Boundaries between the Union Republics of the USSR are increasingly losing their former significance . . . Full-time communist construction constitutes a new stage in the development of national relations in the USSR, in which nations will draw still closer together until complete union is achieved . . . There is a growing ideological unity among the nations and nationalities and greater rapprochement of their cultures . . . An international culture common to all the Soviet nations is developing.”

An outstanding example of these integration policies was the case of

Karelian nation. At one time the Karelian SSR included some 400,000 Karelians. The proportion of the Karelians in the Republic dwindled in the ensuing years to the degree that it eventually comprised less than a quarter of its population.⁷² The same process was evident in respect of a number of other major ethnic groups—some of them existing as union republics (Ukraine, Kazakhstan, Uzbekistan, the three Baltic republics). Certain smaller members of the Soviet family of nations have disappeared as separate political formations altogether. These changes in the ethnic morphology of the Soviet Union are due to industrialization and collectivization leading to the expansion of the Russian ethnic area. These processes are unavoidable in a huge social organism that is experiencing a radical, social and political transformation, in the Soviet Union, however, they were reinforced by the official action directed towards elimination of certain ethnic groups which have either demonstrated a hostile attitude towards the Soviet Union or towards the process of social and economic reconstruction.⁷³

That policies of infiltration were not exclusively reserved to the circle of the Soviet family of Nations was exemplified by two instances. There was considerable infiltration of Soviet personnel into the military, governmental and economic apparatus of the other members of the Socialist Commonwealth during Stalin's time. As a result, a considerable stratum of experts was created which enjoyed a dual status, that of being members of the national communities in Eastern Europe with the status of citizen there, and that of enjoying at the same time the rights and privileges of Soviet citizens detailed to work in other countries. This form of Soviet control came to an end in 1956, and the need arose to disentangle the political and legal difficulties engendered by the considerable number of people having a dual citizenship status. This led finally to a system of dual nationality conventions in order to reaffirm the principle of firm ethnic delimitation within the Socialist Commonwealth of Nations.

The other example of these Soviet policies was the question of the disposition of the territorial conquests from Poland in 1939. Polish Lithuania was occupied by the Red Army in September, 1939, and went partly to the Soviet Union and partly to Lithuania, which, although occupied at that time, was still legally a separate state. The Soviet-Lithuanian protocol of October 27, 1939, assigned some 52,000 square kilometers to Lithuania, including the city of Vilna, while the Eastern part of Polish Lithuania went to the Soviet Union. The population of both parts of Polish Lithuania was somewhat larger than half a million people, of whom only some 70,000 were ethnic Lithuanians. These had been settled mostly in that portion of territory that went to the Soviet Union. The rest of the population consisted of Poles, Byelorussians and Jews. The distribution of these territories was to be combined with the resettlement of Lithuanians from the Soviet part of Polish Lithuania, in exchange for Byelorussians and Jews (Molotov's declaration on October 31, 1939). While these plans were being formulated, the future status of Lithuania was as yet undecided. After the incorporation of the

three Baltic republics into the Soviet Union, the exchange of populations plan was abandoned.⁷⁴

E. *Protection of Minorities Agreements*

One of the fullest provisions concerning minority rights in Soviet international relations may be found in the Peace Treaty with Poland of March 18, 1921 which provided that:

"Russia and the Ukraine undertake that persons of Polish ethnic origin in Russia, the Ukraine and Byelorussia shall, in accordance with the principles of the equality of peoples, enjoy full guarantees of free intellectual development, the use of their national language and the exercise of their religion. Poland undertakes to recognize the same rights in the case of persons of Russian, Ukrainian and Byelorussian nationality in Poland. Persons of Polish nationality in Russia, the Ukraine and Byelorussia shall so far as it conforms with the domestic legislation of these countries, have the right to make full use of their own language, to organize and maintain their own system of education, to develop their intellectual activities and to establish associations and societies for this purpose; persons of Russian, Ukrainian and Byelorussian ethnic origin in Poland shall enjoy the same rights, so far as it conforms with the domestic legislation of Poland."

Other provisions which the Soviet regime accepted unilaterally were less extensive and referred, as regards the treatment of the minority groups, to the regime to be established on a limited territory only. The Soviet Turkish Treaty of March 16, 1921, which settled territorial questions between the two countries, provided that the City and the region of Batum, which was to be included in the territory of Soviet Georgia, would be placed under the regime that would assure certain basic rights both to Turkey and to the Turkish minority in that region. Article 2 provided that:

"1. The population of the localities described in the present article shall enjoy, as regards their administration, a broad local selfgovernment which shall ensure to each commune its cultural and religious rights, while the population will establish its own law of land-tenure corresponding to its wishes."⁷⁵

A somewhat different type of obligation was accepted by the Soviet Union with relation to the population of Karelia, Bukhara and Khoresm (Khiva).

The Soviet Treaty with Finland of October 14, 1920, which set up a regime for the province of Eastern Karelia, contained a number of guarantees for the Karelian population which had returned to the Russian state and which again constituted a *sui generis* minority regime. Article 11 of the Treaty provided that Karelians were granted amnesty in connection with their political activities. Internal order in the course of the first two years following the coming into being of the treaty would be maintained by a local militia, established by the population. The populations of Eastern Karelia was

guaranteed property rights both as regards movables and real estate, in accordance with the legislation in force.⁷⁶

In the Treaty with Afghanistan of February 28, 1921, the Soviet government guaranteed independence to the nations of the East in accordance with the general wish of each of such nations (Article 7). In particular, in application of the said agreement, Article 8 of the Treaty stated that „the High Contracting Parties agree upon the actual independence and freedom of Bukhara and Khiva, whatever the form of government may be in existence there, in accordance with the will of their peoples.”⁷⁷

Treaties to the same effect were concluded between the Soviet Union and the two republics. Article 1 of the Treaty of Alliance between the Khoresm People's Socialist Republic (September 13(12), 1920) and the RSFSR provided that, “. . . Russia unconditionally recognizes the full autonomy of the Khoresm People's Socialist Republic . . . and renounces forever all those rights which were imposed on the Khoresm Republic by the former Russian government.”⁷⁸

The Preamble to a similar Soviet Treaty with Bukhara of March 4, 1921, stated that, “. . . The RSFSR unconditionally recognizes the full independence and autonomy of the Soviet Republic of Bukhara with all the consequences resulting from such recognition, and forever renounces all rights and privileges which were claimed by Russian Tsardom over Bukhara.”⁷⁹

The scope of Soviet treaties on the protection of minority rights exceeded those which were concluded under the auspices of the League of Nations. They included not only cultural rights proper, but also guarantees of the property system, a measure of self-government, and in the case of Khoresm and Bukhara, their preservation as republics within the Soviet system as it then (pre-Union years) existed. None of these rights survived. The self-government and political autonomy guarantees disappeared with the emergence of the Union, rights based upon the private property system were abolished by the change into the socialist property system, cultural rights were reconstructed in the sense that ethnic separatism was replaced by the uniformity of the Soviet social structure and cultural traditions were replaced by the emergence of the cultural traditions of the Soviet man. From the perspective of history none of the minority rights were compatible with the processes initiated by the revolution.

Another feature of the minority protection system formulated by the Soviet treaties was that they did not provide for international controls, which were the essence of the League of Nations protection of minorities treaties. The Soviet Union always rejected demands for the scrutiny of performance as interference with its domestic affairs.⁸⁰

IV. SOVIET NATIONALITY REGIME AND THE STATUS OF ALIENS

Citizenship and nationality problems are of international concern and, therefore, a problem of international law in two connections. In the first place, relations between states involve individuals, nationals, citizens, and aliens. The status of the aliens in the legal system of a given country and their treatment by the authorities of that country regarding their personal status, is a matter of legitimate concern to the country of which they are citizens. In order to establish common standards of treatment for aliens and to avoid difficulties in their diplomatic relations, the general tendency of states is to regulate various matters concerning the treatment of aliens by international treaties, both bilateral and multilateral. While this practice is expanding, citizenship and nationality are basically within the exclusive domestic jurisdiction of states, a point which has always been vigorously upheld by the Soviet Union.

The other source of conflicts involving citizenship and nationality are regulations concerning the acquisition of citizenship. States have adopted various principles regulating the question of acquisition and loss of nationality, such as the principles of *jus sanguinis* and *jus soli*, the principle of the automatic release from nationality in case of the naturalization in another country, or the principle that naturalization elsewhere does or does not affect citizenship without formal release, etc. This may result in a situation in which a person may be considered a citizen of two countries with the resultant conflicts of interests. Finally, there is the question of the cooperation between states in the repression of crimes.

The Soviet state with its system of property relations, presents singular problems in the international aspects of the status of persons, both for Soviet citizens and aliens resident in the Soviet Union, or indeed those whose rights and status are in one or another respect controlled by the Soviet law.

A. *The Status of Aliens*

The movement of persons across national frontiers, from one jurisdiction to another, always was and continues to be an important aspect of international relations. The presence of aliens within the territory of a state raises a number of questions.

The main questions are: what legal order applies to the various circumstances affecting the rights and status of aliens, and what is the method of protecting such rights in the country of residence? There are two methods of solving these questions. One is to accord to a foreign national a status which is based upon an analogy with that of the status of one's own nationals (national regime). The other is to continue, as far as it is compatible with the public order of the country of residence, the regime of the *lex patriae* of the alien.

According to the Soviet Constitution (1936, Article 14, Point 22) legislation on the status of aliens belongs exclusively to the jurisdiction of the Union.

According to Article 122 of the Principles of Civil Legislation of 1961:

"Foreign citizens enjoy in the USSR the same civil law capacity as Soviet citizens. Particular exceptions may be laid down by a Statute of the USSR."

The Soviet solution for determining the status of aliens is therefore that of "the national regime." In Soviet legal terminology this carries a total extension of its territorial law to the alien without regard to his legal status under his own national law.

"National regime" extends also to the protection of the rights of aliens. Thus, according to Article 59 of the Principles of Civil Procedure of the USSR and of the Union Republics:

"Foreign citizens have access to Soviet courts and enjoy equal procedural rights with Soviet citizens."

In international agreements of the Soviet Union with other countries the position of aliens is frequently determined with reference to the most favored nation clause. Article 15 of the Trade and Navigation Agreement with the German Democratic Republic of September 27, 1957, stipulated that, "juristic and physical persons, nationals of each contracting party shall be accorded on the territory of the other Party in all relations no less favorable a treatment, than that accorded to juridical and physical persons of any other third state."

In some instances the term "national regime" is used in a manner to denote an extension of privilege rather than diminution of status as under Article 122 of the Principles of Civil Legislation of 1961. So for instance, the Trade and Navigation Agreement with Norway of December 15, 1925 (Article 18), provided that "Ships of the High Contracting Parties, including their crews, passengers and cargoes shall be accorded the national regime in the ports of the other party at the time of arrival during their stay or sailing, and generally in everything which concerns maritime commerce." This formulation evidently signified that the treatment of ships owned by foreign citizens and juristic persons would have similar treatment to that accorded to Soviet ships.

Thus the term "national regime" appears as a technique which applies equally to situations in which private persons resident in the Soviet Union are assimilated in virtue of this position to the status of Soviet citizens, as indeed are those who are covered by the terms of the most favored nation clause describing the treatment of foreign citizens (physical persons or juristic persons) doing business in the Soviet Union.

The position of aliens is affected by the requirement of reciprocity. According to Article 122 of the Principles of Civil Legislation of 1961:

"Where a foreign state imposed special restrictions on the civil law capacity of Soviet citizens, the Council of Ministers of the USSR may establish corresponding restrictions with respect to citizens of that state."

The same formula is repeated in Article 59 of the Principles of Civil Procedure of 1961:

“Where a foreign state imposes special restrictions on the civil procedural rights of Soviet citizens, enterprises or organizations, the Council of Ministers of the USSR may impose corresponding restrictions in relation to the citizens, enterprises, and organizations of such country.”

In spite of the equality of the position of aliens as compared to the position of Soviet citizens, there are restrictions as regards certain professions or jobs. Regulations adopted by the Council of Ministers of the USSR of September 15, 1958, prohibited foreign citizens and foreign juristic persons from engaging in fishing industries in the Soviet waters including Soviet territorial seas.

Another restriction is found in the resolution of the Council of People's Commissars of the USSR of November 26, 1937, concerning property of aliens residing abroad. The resolution ruled that houses and other constructions, constituting the property of foreigners not living in the USSR, were to be transferred to the local Soviet in whose area the property was situated.

The Mining Act of the USSR of November 9, 1927, which was a measure aimed at the elimination of foreign nationals from the economic life of the Soviet Union, stated that aliens, physical persons and juristic entities might engage in the mining industry only if they had acquired special permits. At the present time, the State has the monopoly of mining operations in the Soviet Union.

The Merchant Shipping and Air Codes introduced restrictions as regards the employment of aliens in shipping and air transport. The Merchant Shipping Code required (Article 53) that the posts of master and first officer on all Soviet ships be exclusively reserved to Soviet nationals. Under Article 19 of the Soviet Air Code a flying crew operating a Soviet airship may consist exclusively of Soviet nationals. The law provides for no exceptions as regards the composition of the crews of Soviet aircraft.

Provisions of the Merchant Shipping Code are less rigorous. Foreign citizens may be employed on Soviet ships in functions other than those of master and first mate. This, however, requires the permission of the Ministry of Shipping acting in agreement with the Ministry for Foreign Affairs, Security Police and the Central Committee of Trade Union of Ship Workers. It is somewhat easier to employ non-nationals on Soviet ships plying between Soviet ports in the Far East; so that in case of emergency, masters of Soviet ships have the right to recruit foreign seamen in foreign ports.

Contrary to the practice prevailing in most of non-socialist countries, the principle of the national regime also extends to matters of status. Soviet law determines the age of majority of aliens, which under Soviet law is eighteen. Furthermore, under the national regime system, restrictions upon the legal capacity of married women in terms of the alien's national legislation is not respected in the Soviet Union, even with regard to contracts and documents affecting their rights in other countries.

The principle of the "national regime," is also the basis for Soviet doctrine according to which nationalization decrees insofar as they affect the property of aliens, require extraterritorial recognition, without regard to the conditions of nationalization, particularly as regards compensation. No compensation is due to aliens, *qua* aliens, as long as their treatment is the same as that of the nationals of the Soviet Union.

The movement of foreigners and persons without citizenship is subject to special controls under the threat of penal sanctions for the violations of the rules of movement and transfer in the Soviet Union. The decree of July 23, 1966, imposed the deprivation of freedom of up to one year, or correctional labor of up to one year, or a fine of five thousand rubles for violations of rules regarding the movement of aliens in the Soviet Union. This includes any willful change in abode without special permission from the authorities at the place of residence, or temporary absence from the place of residence encompassing a visit to localities not mentioned in the entry visas to the USSR, or travel in the Soviet Union in violation of the travel plans specified in the travel documents. Such persons would be subject to these penalties if, in the past, they had twice been administratively punished for similar violations.

In the past Soviet government and Soviet security agencies paid little attention to Soviet international obligations providing for minimum standards of treatment of foreign citizens in Soviet territory. One of the examples of such obligations was Litvinov's letter of November 16, 1933, addressed to the President of the United States, in which the Soviet government assured the President that American nationals "would be granted rights with reference to legal protection which would not be less favorable than those enjoyed in the Soviet Union by nationals of the nation the most favored in this respect."⁸¹

Similar obligations were assumed by the Soviet Union in the treaty of 1925 with Germany. Paragraph 2 of the final Protocol to Article 11 of this agreement (October 12, 1925) provided as follows:

"In cases of detention of all kinds, requests made by the consular representatives to visit the nationals of their country under arrest, or to have them visited by their legal representatives, shall be granted without delay."

For a long time these and similar obligations were totally disregarded. The United States Ambassador to the Soviet Union, Joseph Davies, described Soviet practice in this connection in his report of June 6, 1938, in the following terms:

"Thousands of foreign nationals have been arrested, imprisoned, and held incommunicado. I have been advised recently by the Ambassadors of England, France, Germany, Italy, Turkey, Persia and Afghanistan that representatives of their Governments, respectively, have not been permitted to interview their nationals who were imprisoned here prior to their trial. Thousands of Greeks, Persians, and Afghan nationals, hundreds of Germans and Poles, and substantial numbers of English and Italian nationals

have been imprisoned and held under such conditions.”⁸²

In his conversation with Ambassador Davies on March 3, 1938, “Litvinov, . . . nonchalantly admitted the arrest of hundreds of Germans and other nationals who were denied access to their government officials.”⁸³

Treatment of foreign nationals as described in American Ambassador’s reports conforms to the provisions of the criminal procedure in force in the Soviet Union at that time and is still a part of the criminal procedure following the post-Stalin reform of criminal law. Until the present time, assistance of the defense council to persons under criminal charge is available only in open trial and not during the investigatory part of criminal proceedings. At the same time, it seems that provisions of Consular Treaties with various countries of the Free World may bring a change in the practice of Soviet administration of justice whenever foreign citizens are involved.

B. Acquisition and Change of Citizenship

The current legal system governing matters of Soviet nationality and citizenship is based on the provisions of the 1936 Constitution and the Soviet Citizenship Act adopted by the Supreme Soviet of the USSR on August 19 (18), 1938.⁸⁴

These two pieces of legislation have finally established a single type citizenship for the entire Soviet Union. Accordingly, Article 21 of the Constitution ruled that: “For the citizens of the USSR a single union citizenship is established. Each citizen of the Union Republic is a citizen of the Union.”

In order to maintain the unity provided for in Article 21 of the Constitution, Article 14 provided that within the exclusive jurisdiction of the Union was the legislation on union citizenship and legislation concerning the rights of aliens. This responsibility was discharged both by the highest legislative authorities and organs of the state administration (government).

The Citizenship Act of 1938 is an extremely brief piece of legislation; it determines in most general terms the nationality regime of the Soviet Union. Consequently, many of the aspects of the nationality regime in the Soviet Union must be referred to the legislation of the Union republics.

The Citizenship Act of 1938 (Article 2) defines as citizens of the Union, all those who on November 17 (7), 1917, were subjects of the former Russian empire and who had not lost their Soviet citizenship, and all those who since that date had acquired Soviet citizenship in a manner prescribed by law.

The basic principle of the 1938 Act is that only the international aspects of the nationality regime were subject to regulation by Union legislation, leaving other aspects of the citizenship regime to legislation of the Union republics. This meant that when the acquisition or loss of citizenship was involved (an international aspect) the Union legislation applied (e.g.,

Article 5 and 6), while all other modes of acquisition or loss of citizenship were under the rule of the laws of the republics.

The law is silent as to the acquisition of Soviet citizenship *iure sanguinis*. Only by analogy with Article 6, which speaks of the change of nationality by both parents, either by the acquisition of foreign or of Soviet nationality, children under 14 automatically follow their parents.

The 1938 Citizenship Act follows certain basic principles as regards the element of personal will in the matter of acquisition of citizenship. In the first place, the position of the woman is equal to that of the man. Consequently, marriage *per se* does not affect the nationality of the woman who holds Soviet citizenship. Secondly, the effect of a change of citizenship by the parents has only a limited effect upon their children. In certain situations the change of citizenship by the parents does not affect the citizenship of children at all. In certain situations, when the child is over 14 (but under 18) years of age, the child will follow its parents as regards their newly acquired citizenship, but the child had to express its agreement in this respect. In all cases, however, where such changes occur, a child upon reaching the age of 18 and who acquired alien citizenship owing to the naturalization of his parents, has the opportunity to regain Soviet citizenship.

This is reinforced by the provisions of the Family Codes in force in the Soviet Union. The Ukrainian Family Code (Article 14) ruled that children acquired the nationality of their parents irrespective of the place of their birth. In the Soviet citizenship legislation the *lex soli* is a subsidiary principle. It operates only in cases of marriages of persons of different nationality, or in the situation where one of the parents changes his nationality. A child born in the Soviet Union to a couple with foreign nationality does not acquire Soviet citizenship. Its citizenship is a matter under the rule of foreign law. However, when a child is born to a couple with different nationalities (one being Soviet) it may acquire the nationality of one of the Soviet republics (and of the Union) depending upon the residence of its parents at the time of its birth. Should both parents live in the Soviet Union then the child is a Soviet citizen as well as in the case when one of the parents residing in the Soviet Union is a Soviet citizen. Should both reside abroad, then the child's nationality is determined by agreement between its parents. Soviet family codes, however, provide that a person who has acquired foreign nationality in this manner may reacquire Soviet citizenship in a simplified procedure after reaching maturity.

The mere change of the nationality (from that of the Soviet Union to foreign) by one of the parents has no effect upon the nationality of minor children (under 14) provided that both parents live in the Soviet Union. In cases, however, when such a parent lives abroad, the citizenship of a child shall be determined by agreement between the parents. Should a change of the nationality by one of the parents result in the difference in their citizenship disappearing, minor children would follow their parents under general rules (Article 6 of the 1938 Citizenship Act).

C. Marriage and Adoption

According to Article 5 of the Citizenship Act of 1938:

"The marriage of a citizen of the Soviet Union to a person who does not possess Soviet citizenship has no influence upon his citizenship." In other words, neither a woman nor a man can acquire a new citizenship by marriage. The current text of Article 5, which differs from the original text as it was enacted in 1938 is the direct result of the Soviet principle regarding equality of sexes. Initially the Soviet regime took the position that the "bourgeois" family structure, characterized by the principle that the husband was its official head with various consequences in the field of property regime, nationality, family responsibilities, etc., was to be abolished. This approach while a reflection of modern trends, present in the legislation of other countries (France, USA) in its Soviet form, was too rigid and failed to provide an easy method by which parties might arrange joint nationality for their family.

Soviet citizenship legislation was eventually made into an instrument of population and emigration control, inspired in all probability by the high population losses during World War II. On February 17, 1947, the Soviet Union adopted a decree which prohibited marriage of Soviet citizens to foreigners. Pursuant to this provision, Article 5 of the 1938 Nationality Act was abolished.⁸⁵

This abolition was repealed by the decree of November 26, 1953,⁸⁶ and Article 5 was reinstated with a different wording.

The Soviet Union is a party to the Convention on the Nationality of Married Women of February 20, 1957,⁸⁷ which provided that (Article 1): "... neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during the marriage, shall automatically affect the nationality of the wife." According to Article 2 of the same Convention, should a wife acquire the nationality of her husband, a subsequent change in the nationality status of her husband would not prevent her from retaining that nationality.

In effect, therefore, the Convention confirmed the situation as it exists at present, with this proviso that, "Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures; the grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy."

The 1938 Citizenship Act is silent as regards the effects of adoption on the nationality of children. Article 43 of the Ukrainian Family Code expressly provided that adoption of a Ukrainian child by an alien does not deprive the child of Ukrainian nationality. The Citizenship Law of 1931⁸⁸ ruled (Article 11) similarly that a child of Soviet citizens adopted by foreign nationals retained its Soviet citizenship. As the 1938 Act contains no special provisions concerning the change of citizenship due to adoption, it is only logical to as-

sume that adoption may constitute one of the reasons why a person may ask for naturalization or permission to renounce Soviet citizenship.

D. Naturalization, Loss and Deprivation of Citizenship

Provisions concerning naturalization, loss and deprivation of citizenship are extremely brief. There are no conditions to be met to qualify for naturalization. The jurisdiction to grant naturalization belongs to the Presidium of the Supreme Soviet of the USSR, and in the case of an alien who is residing in the Soviet Union it belongs to the Presidium of the Supreme Soviet of the Union republic in which the alien resides. The law provides no special procedure for the acquisition of citizenship through naturalization and grants no special privileges to persons owing to origin, social usefulness, or any other reason. The Family Codes of the Union Republics provide that in certain situations a person who has lost Soviet citizenship as a minor owing to a change of nationality by his parents may regain Soviet citizenship upon reaching full age in simplified proceedings prescribed by the legislation of the USSR.

Special procedures were provided in separate legislative acts for the reacquisition of Soviet nationality by certain categories of persons who had the standing of a special relationship, either owing to their ethnic origin or their past connections with the Russian state. An example of this type of legislation is the re-emigration of the members of the White Russian emigrants and of the Armenian fugitives from Russia.

Another example of these special procedures are those which represent citizenship and naturalization provisions dealing with the population of the annexed territories, or of international agreements on the basis of population exchange with other countries.⁸⁹

Release from citizenship and deprivation of nationality is within the exclusive jurisdiction of the Presidium of the Supreme Soviet of the USSR. A citizen may be released from Soviet nationality on his own application, and as long as he is not released, the fact of the acquisition of foreign nationality cannot be invoked against the authorities of the Soviet Union or of the Union republic of which he is a citizen. In addition to release from nationality by an individual application on the part of the interested parties, Soviet practice knows examples of the mass release of certain population groups because of their ethnic origin. A recent example is the release from Soviet citizenship of all ethnic Poles and their families living in the Soviet Union who had taken part in the organization of Polish armed force in the Soviet Union irrespective of whether they ever possessed citizenship of the Polish state.

Prior to the reform of Criminal Law in 1958-60, the deprivation of citizenship was one of the criminal sanctions provided for certain crimes against the Soviet state. This penalty was abolished in 1958 and consequently

the provision of Article 7, Point a), of the 1938 Citizenship Act is not applicable anymore.

E. *Nationality of Juristic Persons*

The *statutum personale* of a juristic person is determined by its *lex patriae*, and therefore its "nationality" is of key importance. There are several theories as to the method by which the nationality of a juristic person is determined. 1) The "control" theory which relies upon the nationality of the stockholder. 2) The "siege social" theory which relies upon the nationality of a legal entity as witnessed by the place where it has its main office. 3) The "real link" theory which underlines the connection with an economic organism in which the legal entity is active. Soviet scholars have unanimously condemned the control theory. In their view, it is a typical product of the era of imperialistic penetration of foreign capital in order to dominate a weaker social organism and moreover to exploit it for the benefit of a stronger nation.

In the Soviet Union, the question of nationality of juristic persons arises only in connection with the status of a foreign trade organization. Determination of the nationality of a Soviet juristic person raises no difficulty whatsoever. Soviet foreign trade organizations are established under Soviet law, have assets allotted to them by the Soviet state, have both a statutory and a real seat in the Soviet Union and exercise their activity on the basis of the government's monopoly of foreign trade. Indeed, in terms of Soviet reality the Soviet foreign trade organizations have Soviet nationality in the same sense that the Soviet governmental agencies possess it.

All other juristic persons active in foreign trade relations are foreign. An early Soviet instruction from the NEP period concerning the operation and agencies of foreign companies in Soviet territory of May 12, 1923, defined as foreign all companies and firms established outside Soviet territory having juridical foundations for their trade operations in the country of their principal location, evidenced by the fact of registration, confirmation of the statutes, or issuance of the charter.

At the present time, criteria relating to the nationality of foreign legal entities (companies, corporations) have been greatly simplified. As previously stated, there are no foreign companies admitted to business activity in the Soviet Union itself. The question of nationality arises, as in the case of Soviet legal entities, only in the context of foreign trade. More specifically, the provisions of the trade and navigation agreements concluded with other countries grant to the nationals of those countries, both physical persons and legal entities, the right to participate in the foreign trade operations. While Soviet civil legislation is silent in the matter of factors determining the nationality of a foreign juristic person, trade and navigation agreements follow a fairly uniform line and establish the usual criteria of nationality in Soviet treaty practice. Two elements are used in these treaties to determine

the nationality of foreign (capitalist) or Soviet firms or corporations. These elements are the factual connection with the territory of a given country and the legal context of their creation. So for instance, a Soviet-Canadian Trade Agreement of February 29, 1956, referred to:

"Soviet citizens and Soviet economic organizations and other juristic persons established according to Soviet laws on the one hand, and Canadian citizens and other physical persons living and conducting business affairs in the territory of the other . . ."

The treaty with France (September 3, 1951) speaks of juristic persons established according to French laws and of Soviet juristic persons, which have, according to Soviet legislation, civil capacity. The treaty mentions French merchants and industrialists, and also Soviet state organizations, which enjoy under Soviet legislation the rights of independent juristic persons. The Trade Agreement with Switzerland (March 17, 1948) speaks of juristic persons and trade enterprises established on the territory of the contracting parties in accordance with the legislation in force on that territory. The treaty with Turkey (October 8, 1957) was more specific. It granted the status of a juristic person to organizations established under the laws of one country for the purpose of trade and industry in the territory of the other, and the right to appear in courts both in the capacity of claimant and respondent.

In some cases, the nationality of juristic persons and foreign trade associations is determined by reference to the seat of a given economic institution in the territory of one of the contracting parties.

Soviet treaties with the other socialist countries do not deal with the nationality criteria of their economic organizations as this is apparent and beyond question. This is easily explained by the fact that state organization for foreign trade in the socialist countries follow the Soviet pattern. Furthermore, the number of foreign trade organizations authorized to handle foreign trade transactions is limited.

Soviet writers insist that Soviet law relies upon the incorporation principle in determining the nationality of a juristic person. This seems an adequate criterion in terms of Soviet reality; however, in the free economy countries the incorporation principle is far from satisfactory. This is reflected in Soviet treaty practice which usually supports the incorporation principle with an additional element indicating a real link with a national territory and its economic life.

Reference to incorporation and a nationality criterion has had other uses. It provided an adequate argument for the nationalization measures that had liquidated foreign interests in Russia. The Soviet government claimed the right to liquidate all corporate interests which had a legal connection with the Russian territory and had assets active in the Russian economy.

In the final analysis, therefore, the Soviet theory of incorporation is but another form of the "real control" principle adapted to Soviet conditions. Incorporation in Soviet law is an act of authority bestowing legal capacity

and the right to manage for the government its monopoly of economic activity in a defined field. It is also an act assigning tasks and responsibilities in the economic life of the country and an act of endowment of a corporate entity with means and economic assets to fulfill its functions. Incorporation in Soviet practice is the control principle in a social order in which the ownership of all the means of production is vested in the state, and the organizing function in the economic life of the country is the exercise of governmental power.

F. *Stateless Persons*

Soviet nationality regime, prior to the enactment of the 1938 Soviet Citizenship Act, accepted as presumed that:

“Everybody who resides in the territory of the Soviet Union shall be deemed to be the citizen of the Union until he proves that he is of foreign nationality.”⁹⁰

The relevant provision in the 1938 Act (Article 8) no longer contains the presumption of Soviet citizenship:

“Persons residing within the territory of the USSR, who under the provisions of the present law are not citizens of the USSR and who possess no proof of foreign citizenship shall be considered persons without citizenship.”

The real meaning of the change of the Soviet legislative acts concerning citizenship lies in its emphasis. It does not mean that the presumption of citizenship was replaced by the presumption of statelessness. It means rather that records of vital statistics and of the population control were completed and that the presumption was replaced by the precise documentation of the status of each member of Soviet society.

Presumption of Soviet citizenship was important, initially, in view of the disorder and chaos in the administration of Russia. By 1938, the opposite was the case. The population movements were strictly controlled, labor and labor reserves were managed according to the economic plan, direction of labor was effectively introduced, and the policy of the planned distribution of population was underway. The entire working population was provided with proper passports and labor record books, and the presumption was replaced by documentation as to who was and who was not a Soviet citizen.

The regime of stateless persons is in every respect similar to that of aliens resident in Russia. They are under the national regime, and Soviet laws control their legal capacity in the same manner as those of aliens and of Soviet citizens. They are also under the same restrictions as regards employment as aliens resident in the Soviet Union.

G. Dual Citizenship

The general orientation of the Soviet nationality regime under the rules of the 1938 law tends to encourage the omnipotence of the authorities who are in charge of nationality affairs. The legal system contains only a limited number of directives controlling the exercise of governmental power in the process of granting naturalization, releasing or depriving an individual of the nationality and rights of a Soviet citizen.

In effect, Soviet nationality regime represents a step backward in the general evolution of the nationality legislation in modern times. The principle *nemo exuere potest patriam suam* was gradually replaced by the principle of free choice. The practice initiated by the United States in the so-called Bancroft treaties (1868) led to a recognition of the fact that the state has an obligation to release its citizens if they have acquired the nationality of another state. Modern legislation and international conventions have generally reflected a tendency to eliminate instances of dual nationality. The principle of free choice eliminated the automatic effect of marriage upon the nationality of the woman. This perhaps complicated the nationality situation, but it also provided individuals with a broader ability to manage their affairs in situations involving the presence of foreign elements.

Superficially, the Soviet Union had adopted a policy which featured greater freedom for the individual in matters of nationality and citizenship. Marriage had no effect on the nationality of the woman, and foreign naturalization had only a limited effect upon the citizenship of children. Soviet legislation, however, has not followed up this rule by permitting the woman a choice as to her nationality by choosing that of her husband or the husband electing the nationality of his wife. This also applies to situations involving minor children.

As regards the principle of free choice and automatic release from the citizenship of the Soviet state, the initial attitude of the revolutionary government favored the principle of personal choice. This attitude was impelled by the fact that the new regime in Russia was connected with the partial disruption of the Russian empire and emergence of a number of new states. In this situation the recognition of the rights of various ethnic groups to the establishment of their own states was bound with the principle that citizenship in the new polities automatically terminated political ties with either pre- or post- revolutionary Russia. At times it was required that citizens, or potential citizens, of the new states were to make a declaration as to their choice. As a rule, however, their choice was not dependent upon such a declaration.

This applied in particular to situations connected with international agreements on the delimitation of the new states from the rest of Russia, and the exercise of the right of option by certain categories of inhabitants of Russia or the detached territories. Decrees and administrative regulations issued by various Soviet republics in the initial years of the Soviet state

expressed this right of choice in various ways. Some of the decrees extended this right of choice and the right to renounce citizenship ties to members of the ethnic groups which had formed new states. Other decrees referred to "foreigners." Included in this category were both the nationals of other Soviet republics and nationals of the states not connected with the Soviet Union. Article 2 of the Ukrainian decree of March 11, 1919, on renunciation of Ukrainian citizenship ruled:⁹¹

"All former subjects of the Ukrainian State, and all former subjects of the territories of the Russian Empire which at present have seceded from Russia because of political change, residing within the Ukrainian Soviet Socialist Republic, are recognized as Ukrainian citizens until they renounce it."

Article 2 of the decree stipulated that applications for renunciation of Ukrainian citizenship could be filed by persons over seventeen years of age. The enumeration of the documents to be submitted with such applications shows that this right of renunciation was extended only to persons of non-Ukrainian origin, and subject to the condition that there was consent of some other state to admit such persons to its citizenship.

Article 10 of the Constitution of the Far Eastern Soviet Republic (DVR) of April 27, 1920, provided that all persons born in the former Russian Empire and residing in the Far Eastern SSR (DVR) had the right to divest themselves of its citizenship by option in case they wished to become nationals of one or the other republic formed in the territory of the former Russian Empire. A period of six months was granted for exercising these rights.

The Georgian decree of July 11, 1922, gave the right to renounce Georgian citizenship to citizens of non-Georgian race within six months of the publication of the decree. An essential condition was that they leave the country.

Thus in the early days of the Soviet order in Russia, the principle of the free choice of citizenship was a constant, indeed, the only practical policy. The uniform body of Russian subjects was in the process of transforming itself into several bodies politic. While at times, special proceedings were provided for those who had acquired the nationality of a new state to register their new status and renounce their old Russian nationality, these proceedings were established for the purpose of statistics and the clarification of status only.

The principle of choice was even more pronounced in the process of the political and social segregation of those who supported the regime, or belonged to the social strata which the regime purported to represent as distinguished from those who were opposed to it. This tendency underscored the fact that opponents of the new regime who had either supported the fallen governments or who had fought either politically or in the White Russian armies against the Bolshevik government and who escaped abroad and refused to return to Russia, were understood to have renounced Soviet citizenship.

As time went on, Soviet nationality legislation restricted the principle of

free choice somewhat. However, as long as the administration of the citizenship question remained in the hands of the republican authorities, the general trend was to provide orderly procedures for renunciation and release from citizenship, which prescribed legal grounds for the decisions of the competent authorities.⁹² As late as 1933, the Ordinance of the Council of People's Commissars⁹³ provided that Russian subjects who had left Russian territory prior to the October Revolution and who had acquired foreign citizenship were not considered citizens of the Soviet Union.

For quite some time, because of the isolation of Russia, the problem of dual nationality was not an important issue in Soviet international relations. The 1938 Soviet Citizenship Act, which was completely silent on this point, reflected the attitude of the Soviet regime regarding this question.

One of the first dual nationality agreements concluded by the Soviet Union was with Mongolia on May 20, 1930, which was replaced by the agreement of February 28, 1937.⁹⁴ In due course this agreement was replaced by the 1958 agreement. In the 1937 agreement the two parties agreed to grant its nationality to a national of the other party only with the agreement of the state of original citizenship.

The question of dual nationality became important in a limited sense, leading to a number of dual nationality conventions concluded by the Soviet Union with other socialist countries in the post-Stalin era.

During the immediate post-World War II period the system of allied countries established by the Soviet Union in Eastern Europe (the Socialist Commonwealth of Nations) depended heavily upon the infiltration of the Communist Parties, of the governmental apparatus, of the armed forces, even of the judiciary, of the allies by Soviet citizens.

These citizens came either as experts to assist the organization of those governments, or assumed the garb of the citizens of the new socialist countries to occupy high governmental positions.

After the death of Stalin, there was a trend toward greater independence within the Socialist Commonwealth of Nations. The new socialist countries sought to limit the participation of the Soviet government in the administration of their countries *inter alia* by means of removing Soviet citizens from the governmental positions they held in these countries. This demand was officially acknowledged in the Soviet Party and Soviet Government declaration of October 30, 1956, issued on the eve of Soviet military intervention in Hungary, which stated *inter alia*:

"As recent events have shown, the need has arisen for an appropriate declaration concerning the position of the Soviet Union in the mutual relations between the USSR and other socialist countries, primarily in economic and military spheres. The Soviet government is ready to discuss with the governments of other socialist states the measures insuring the further development and strengthening of the economic ties between socialist countries in order to remove any possibilities of violating the principle of national sovereignty. . . This principle should also apply to advisers. . ."

Soviet advisers were used in response to the call for specialists, and, as there was no longer a need for them, the Soviet government was prepared to:

"...examine together with the socialist states the question of the expedience of having advisers from the USSR to remain in these countries. . ."⁹⁵

And yet the matter could not be settled by a mere removal of Soviet experts from the other socialist countries and dispensing with their services. During the period of over a decade, some of the experts became integrated into the social fabric of nations which had become their second fatherland.

The matter was further complicated by the fact that although the nationality legislation of other socialist countries on the whole prohibited dual citizenship by their rigid attitude towards foreign naturalizations, modelled upon the Soviet law of 1938, they actually favored the growth of the dual nationality cases, particularly involving persons from the other socialist countries. As long as the principle of the presence of Soviet advisers in the government apparatus of the other socialist countries was an accepted formula of government, dual citizenship was not a disadvantage. Once, however, this principle was rejected, persons with dual citizenship had to be given a chance to retain the citizenship which, in terms of their personal interests, was preferable.⁹⁶

The basic principle underlying these treaties was that persons resident in the territory of one contracting party, with citizenship of the two contracting parties could opt for the nationality of one of them. Moreover, the principle of voluntary choice was stressed by the provisions of the conventions. The Soviet-Yugoslav Treaty, however, stipulated that the citizenship of the country of residence prevails if the party in possession of two citizenships continued to live in the country of original nationality, while it acquired the new nationality without the permission of its original country.

Minors in this respect follow the nationality of their parents provided that parents are of the same nationality and they choose the same nationality, or if only one parent is alive. Should parents have or choose different nationalities then the minor acquires the nationality which the parents have chosen for him. In cases where they disagree, the minor will have the nationality of the country in which he is resident. Should a minor live in a third country, then in case of disagreement between parents the country of their last common residence would be regarded as the country of his nationality. Furthermore, a minor over fourteen years of age may choose a different nationality for himself than that chosen for him by his parents, or he may acquire nationality according to the residence element.

The principle of the free choice of the child's citizenship by the parents is upheld in the period of three months following the birth of the child. Should they fail to choose, the child acquires the citizenship of the country in which he was born. If a child is born on the territory of a third state, he will acquire the citizenship of that state of which one of the parents is a citizen, provided that both parents had their last joint domicile there prior

to settling in third state. Should this be lacking, the child acquires the citizenship of the mother.

In the period of six months since this convention comes into force parents of the child with a dual nationality may choose for that child the citizenship of one of their citizenships. Should they fail to do so, then the child becomes a citizen of the country of residence. Should he be a resident of a third country, then general provisions of choice of citizenship according to the last common residence of the parents, or the citizenship of the mother applies. Conventions provide for situations of orphaned children, and children under exclusive parental care of one of the parents. In addition, the parties have agreed to communicate to each other applications and decisions concerning the nationality of children born to parents of different nationalities when a national of the other party is a parent.

Soviet dual nationality conventions with Czechoslovakia and Bulgaria provide also for measures to prevent cases of dual nationality. Should the parents be of different nationality, they may chose for their child (at his birth) one of their citizenships. Should they fail to agree in this matter, then the nationality of the country of birth is the nationality which will apply. Should the child be born in a third state, then the nationality of the last permanent residence of both parents applies.

In 1963 Hungary⁹⁷ and in 1965 Poland⁹⁸ entered into additional agreements concerning dual nationality, mainly in order to prevent dual nationality cases along the lines adopted by the conventions with Bulgaria and Czechoslovakia.

H. Soviet Citizenship and Human Rights

The Soviet concept of citizenship and nationality has always emphasized its link with the state. The individual as such had no standing in international law, and the relationship between an individual and the state was not regulated by other rules than those established by the state itself. Citizenship is a relationship which in certain situations may contribute to rights and obligations of states, but the concept as such is outside the jurisdiction of international law. As Professor Kozhevnikov in the International Law Commission stated:

"The rights of the individual lay outside the direct scope of international law, and it was only by virtue of the legal bond which existed between the individual and the State that his rights could be protected." Consequently, it was inconceivable to endeavor to establish a regime, which would take the matter of citizenship from the exclusive jurisdiction of the state. "The idea," Professor Kozhevnikov continued, "that international law should have priority over the sovereign rights of states was quite unacceptable. It sought to make of international law something standing above states, whereas, as he had already pointed out, the whole purpose of that law was to govern

relations between them. He was resolved to resist an idea which would make nonsense of international law, and in doing so he was confident that he would enjoy the support of the vast majority of democratically minded people throughout the world.”⁹⁹

In terms of Soviet positive law, no distinction can be drawn between the two concepts: nationality and citizenship. “It has been suggested,” Professor Kozhevnikov stated in the International Law Commission, “that the Commission should distinguish between nationality and citizenship. So far as Soviet law was concerned, it safeguarded equal rights for all Soviet citizens irrespective of their nationality. All citizens of the Soviet Union enjoyed equal rights.”¹⁰⁰

Professor Kozhevnikov further explained that, in his view, the citizenship question as it touched upon international law problems was a state-individual relationship established by an act of state (nationality legislation or individual grant of citizenship). Thus, rights of individuals outside that bond were inconceivable. He was doubtful as to the usefulness of the provision which would accord to the individual living in a territory the right to the nationality of the state which had acquired that territory.¹⁰¹ He was also doubtful as to the propriety of giving an individual an automatic right to opt for a citizenship of one of the two countries in the event a territorial change had taken place. He moreover voted against articles of the nationality convention which sought to limit or exclude the right of a state to deprive individual persons or a group of persons of its citizenship.¹⁰²

This general attitude also colors the problem of human rights. Human rights depend upon their realization through the action of the sovereign state. As the Soviet delegate Vyshinski, speaking to the General Assembly of the UN on December 9, 1948, explained, individual rights defined and listed in the Declaration on Human Rights had to be concretely related to duties of the state, to protect individual life, to assure social security and the right to education. He insisted that the freedom of information and freedom of opinion should be controlled in the interests of peace and democracy, and could not be granted to those who propagated fascist views and ideas.

The next day (December 10, 1948) Vyshinski further developed his points by stating that the realization of human rights was inherent in the concept of national sovereignty. The concept of human rights was conceivable only within the context of the state, which assures their protection and enforcement. Insofar as the concepts of the Declaration, which separate human rights from the institution of the state were directed against the state, he regarded them as reactionary. The very essence of the world order he asserted was the independence and sovereignty of nations. A different attitude would lead to the ultimate surrender of weaker nations to the economically stronger nations.

The pattern of human rights presented in Vyshinski's speeches is basically the pattern of the Soviet bill of rights. The exercise of rights is linked with the monopoly of political activity directed towards a concrete political goal.

The very formulation of individual rights presupposed the adoption of the Soviet system in which the government was the owner of the means of production, had the monopoly of publishing, and the monopoly of the "democratic" ideology.

The right which was missing from the Declaration of Human Rights, Vyshinski pointed out, was the right of nations for self-determination. The right of each nationality to form its own state, with all the paraphernalia of sovereignty, represented in his view the solution of all the problems of human rights. The ideal solution would be to adopt the system which was established in the Soviet Union, in order to realize human rights through proper political organization, both in terms of national as well as social independence.¹⁰³

The Ukrainian delegate amplified Soviet objections to the wording of the Declaration as an impractical and theoretical statement of principle. The Declaration, he stated, contained a series of rights which could not be exercised in view of existing conditions and economic structures of a great number of countries. Before the right to work, to rest and to education could be put into effect, he submitted, it was necessary to alter drastically the economic system of private enterprise. He said that there could be true equality among men only under an economic system which guaranteed to everyone equal conditions and opportunities, and that was not the equality mentioned in the Declaration.¹⁰⁴

In 1948 the Sixth Committee of the UN considered the complaint of Chile against the USSR asserting the "Violation of Fundamental Human Rights, Traditional Diplomatic Practices and other Principles of the Charter." The complaint arose in connection with the Soviet policy of obstructing the departure from the Soviet Union of Soviet citizens (husbands and wives) married to foreign citizens (among them foreign diplomatic personnel and servicemen who during the war served in the Soviet Union). In particular the former ambassador of Chile to the Soviet Union complained that his son (Mr. Cruz) married a Soviet citizen, and that the Soviet government had rejected his application for an exit visa for his wife. This rejection, it was alleged, was incompatible with normal diplomatic usage and international courtesy, and also constituted a breach of fundamental human rights. In the discussion, the British delegate asserted that, "The Declaration of Human Rights recognized the freedom of persons to leave their countries and their freedom to marry foreigners, and the USSR, having voted for these freedoms in the Third Committee, could not now question these provisions on the ground of their being matters of purely domestic jurisdiction." The complaints of Chile were eventually joined by France, Britain, the United States, and Canada. The representative of the latter country said that the experience of some Canadian citizens who had married Soviet women had been the same as those of the United Kingdom and the United States nationals. Moreover, the Canadian Government had been frustrated in its attempts to communicate with those of its nationals who had been trapped within the enlarged boundaries of the USSR as a result of the war.

The Soviet government maintained the view that the decree of the Supreme Presidium of February 15, 1947, forbidding Soviet citizens to marry foreigners needed no justification as the matter was within the exclusive jurisdiction of the Soviet state. The decree had been passed, according to the Soviet government, in order to satisfy domestic public opinion aroused by the mounting hostility toward the Soviet Union abroad.

Similarly, reference to human rights was wholly irrelevant in the matter of granting visas, because that was a matter within the domestic jurisdiction.

As regards the violation of diplomatic practices alleged in the case of Mrs. Cruz, the USSR representative stated that diplomatic immunity did not extend to all members of a diplomat's family. Indeed, the Institute of International Law had recognized that nationals of a country to which they were accredited could not claim diplomatic immunity. Thus, Mrs. Cruz could not invoke the principle of diplomatic immunity.

In addition, the Soviet delegation stated that it had voted against the provision concerning the freedom of movement in the Declaration on Human Rights. Referring to the provisions of the Charter relating to human rights, the Soviet delegate stated that measures taken were precisely to defend human rights of Soviet citizens. Foreign citizens could live with their spouses in the Soviet Union, and other husbands and foreign wives were also invited to come to the Soviet Union. On April 25, 1949, the General Assembly adopted a resolution which *inter alia* declared that:

"The measures which prevent and coerce the wives of citizens of other nationalities from leaving their country of origin with their husbands or to join them abroad are not in conformity with the Charter; and that when these measures refer to the wives of persons belonging to foreign diplomatic missions, or of members of their families or retinue, they are contrary to courtesy, to diplomatic practices, and to the principle of reciprocity, and are likely to impair friendly relations among nations."

The General Assembly decided to:

"Recommend the Government of the Union of Soviet Socialist Republics to withdraw the measures of such a nature which have been adopted."¹⁰⁵

While the Soviet Union declared its reservations during the discussion thereby indicating only the limited support of its government for the principles in the Declaration on Human Rights, the Soviet Union did sign and ratify a number of conventions which have made legally binding some of the principles of the Declaration. The list of those conventions (until 1962) is as follows:

1. On the Freedom of Association and Protection of the Right to Organize.¹⁰⁶

2. On the Prevention and Punishment of the Crime of Genocide, with the following reservations:

- a. The USSR does not consider as binding upon itself the provision that disputes between signatories concerning interpretation, application and implementation of the convention shall be referred for examination to the

International Court of Justice at the request of any party to the dispute, and maintains that in each particular case the agreement of all parties to the dispute is essential for its submission to the International Court for adjudication.

b. The USSR considers that all provisions of the convention should extend to non-self-governing territories, including the trust territories.¹⁰⁷

3. On the Right to Organize and Collective Bargaining.¹⁰⁸

4. On the Equal Remuneration for Men and Women.¹⁰⁹

5. On the Political Rights of Women, with the following reservations made by the USSR, Ukrainian SSR and Byelorussian SSR:

a. The three states disagree with the provision of Article 7 that the legal effect of a reservation to the Convention is to make the Convention inoperative as between the state making the reservation and any state which does not accept it; instead, they maintain that a reservation affects only a part of the convention leaving the remainder operative between states parties to the Convention.

b. The three States declared that they do not consider themselves bound by the provision that disputes between parties concerning interpretation or application of the Convention shall be referred to the International Court of Justice for decision on request of any of the parties to the dispute, and declared that agreement of all the parties to the dispute shall be necessary in each case." Five states (China, Denmark, Israel, the Dominican Republic, and Sweden) notified the Secretary General of the UN that they did not accept these reservations, and the convention accordingly did not come into force between them and the USSR.¹¹⁰

6. On the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.¹¹¹

7. On the Nationality of Married Women.¹¹²

The Soviet Union is not a party to other conventions which are also linked with the General Declaration and concerns the rights and principles formulated there. These include the following conventions:

1. Convention on the Status of Refugees.

2. The Universal Copyright Convention.

3. Convention on the International Right of Correction.

4. Convention on the Status of Stateless Persons.

5. The Abolition of Forced Labor Convention.

6. Convention on the Reduction of Statelessness (1961).

7. On Consent to Marriage, Minimum Age for Marriage, and Registration for Marriage (1962).

8. Protocol to the 1960 Convention Against Discrimination in Education (1962).

V. INTERNATIONAL CRIME REPRESSION

A. *The Extraterritorial Effect of Soviet Criminal Law*

From the general point of view, there is a difference between the criminal law solutions adopted by the common-law countries and those of the civil-law world. Perhaps too much is made of these differences as both systems rest on the same basic principle that the rule of criminal law is restricted to the territory of a particular country, and only in exceptional cases reaches beyond the frontiers of a state. At the same time these differences lead to practical consequences, and at this juncture it is enough to state that, as Soviet law obviously belongs to the civil-law world, the legislative techniques followed by its members must provide a background for a comparison and analysis of soviet solutions.

In civil-law countries the question of criminal liability for crimes committed abroad is decided by the fundamental rules of extradition. Nationals of civil-law countries are punished for crimes committed abroad as such countries do not practice extradition of their own nationals. In a similar situation, a foreign national is extraditable to foreign courts. It follows therefore that as no country has a direct interest in the prosecution of crimes committed outside its territory the jurisdiction of the courts as regards its own nationals is subsidiary, which is apparent in the fact that a national is punished for a crime committed abroad if the *lex loci* classifies it as a crime, although only the national law applies.

There are important exceptions to these principles. In the first place, nationals and aliens will be prosecuted if their crimes committed abroad have affected the interests of the state or of a national, even if the law of the place where the crime was committed did not define it as a criminal and punishable act (e.g., foreign currency regulations, espionage, bearing arms against one's own country, etc.)¹¹³

Prima facie, the Soviet Law of December 25, 1958, on the General Principles of Criminal Legislation (Arts. 4-5) merely repeats with some modifications Articles 2-4 of the Code of 1926. The force of Soviet criminal law and the jurisdiction of Soviet courts in criminal matters covers the territory of the Soviet Union, irrespective of the nationality of the offender, and extends to crimes committed abroad only when the offender is a Soviet national or a stateless person residing in the Soviet Union. As regards foreigners, Soviet criminal law has no extraterritorial application except where international treaties provide for the punishment of foreign nationals for crimes committed abroad.

This somewhat conservative formulation is in fact far more extensive with respect to the extraterritorial force of the Soviet criminal statutes and the jurisdiction of Soviet courts, than it prima facie appears.

In the first place, modern European codes provide for the punishment of

only the more serious crimes committed abroad. This reservation is missing from the Soviet criminal statutes.

This may be due to the fact that the Soviet criminal code does not distinguish between various categories of crimes. What is even more important, Soviet criminal law does not contain the reservation that the power to prosecute for a crime committed abroad is not dependent upon the fact that a punishable act under the *lex fori* is also a crime under the *lex loci*.

Of even greater importance is the fact that the provisions of Soviet substantive criminal law are drafted in a manner which indicates that little attention has been paid to the principles concerning the limits of responsibility defined in the law on the General Principles of Soviet Criminal Law. Under the 1958 Law on Crimes against the State, espionage against the Soviet state, a crime which under Soviet law may be perpetrated only by an alien, is punishable regardless of the place where it was committed. Under Article 24 of the Law on Anti-State Crimes, the counterfeiting of Soviet currency is punishable regardless of the place where it is done or the nationality of the offender. The same applies to other definitions of crimes whenever the interests of the Soviet state or of Soviet citizens are involved.

The provisions that "Aliens who commit crimes outside the confines of the USSR shall be responsible under Soviet laws in cases provided for by international agreements" is also common with the general practice of many civil-law countries.

This somewhat laconic formulation covers an entire range of crimes commonly known as international crimes, which are considered to offend the interests of the entire civilized world. Numerous modern codes have incorporated the list of such crimes contained in the resolution of the first congress for the Unification of Criminal Law held in Warsaw in 1927, which included the following offenses: piracy, counterfeiting of money, slave trade in women and children, terroristic activities involving the use of means capable of creating general danger, trade in narcotics and other dangerous drugs, propagation of obscene publications, and all other crimes to be determined in international treaties. Since the Congress was held, an entire range of crimes, listed in its resolution in addition to some others, have been declared international crimes in international treaties, and the Soviet Union is a party to most of these.¹¹⁴ The only major exception seems to be the crime of terroristic activities, which the USSR as a revolutionary state has to regard in a somewhat different light than do the states of free societies.

Another dimension to the international crime repression was added by article 10 of the new law on Anti-State Crimes of December 25, 1958, which is the last provision in the chapter on Crimes Especially Dangerous to the State. It states that:

"In view of the international solidarity of toilers, especially dangerous crimes against the State committed against any other state of toilers, shall be punished in accordance with Section 1 through 9 of the present law."

The international penal law of the socialist order is only another version

of the basic ideas on the general suppression of crimes in the interest of the entire human race, however, with an important twist in the concept of such crimes. Under the traditional criminal law, attacks against the legal order calling for general repression, irrespective of the place where the crimes were committed, include only non-political crimes, and as a rule the political nature of an offence makes any crime punishable exclusively under a local legal order. In Soviet law the opposite is true, and most of the crimes declared punishable under the law of December 25, 1958, are political in character.

B. Extradition

The other form of international cooperation in crime repression is the extradition of criminals, which as we have said before, in the legal systems of the civil-law countries applies exclusively to aliens charged with crimes over which courts of the extraditing country have no jurisdiction.

The Soviet Union has no extradition treaties with the free economy countries. In contrast, legal assistance treaties with the socialist countries all contain provisions dealing with the extradition of criminals.

The Soviet Union concluded legal aid agreements with the following socialist countries: Bulgaria (December 12, 1956),¹¹⁵ Hungary (July 15, 1958),¹¹⁶ East Germany (November 28, 1957),¹¹⁷ North Korea (December 16, 1957),¹¹⁸ Poland (December 28, 1957),¹¹⁹ Rumania (April 3, 1958)¹²⁰ Czechoslovakia (August 31, 1957)¹²¹ and Mongolia (August 25, 1958).¹²² All these treaties include provisions regarding extradition of criminals.

The duty of extradition includes persons against whom criminal proceedings were initiated, or who have been subject to the execution of a valid sentence. Extradition covers only crimes which threaten deprivation of liberty for over one year. Only aliens are subject to extradition, and this may be refused if the crime was committed on the territory of the party to whom the extradition request is addressed. Such a refusal may occur if the prosecution or execution of the sentence is barred according to the law of that state either by the statute of limitations, or for other legal reasons; e.g. if the court of that party has either imposed a sentence or quashed the criminal proceeding for the same crime, or if according to the legislation of both high Contracting Parties, the crime may be prosecuted on a private complaint only.

The treaties provide for special extradition proceedings in which the motion must be made by the Procurators-General or Ministers of Justice of the countries concerned.

The duty to extradite is supplemented, moreover, by the duty of prosecution for extraditable crimes of a state's own nationals under its own laws for crimes committed on the territory of the other party.

The duty to extradite one's own nationals was formulated in regard to war criminals in connection with World War II. It was first formulated in the Moscow Declaration of the Conference of Allied Powers on October 30,

1943, and later in the Declaration on the Defeat of Germany (Berlin) of June 5, 1945, and in the Peace Treaties with Bulgaria, Hungary, Rumania, Italy and Finland of 1947.

NOTES

¹ *SU RSFSR* (1918) no 31.

² *Ibid.* (1921) no. 67

³ *Ibid.* (1921) no. 62.

⁴ *Ibid.* (1921) no. 72.

⁵ *Ibid.* (1922) no. 1.

⁶ *SZ* (1924) no. 23.

⁷ *Ibid.* (1925) no. 77.

⁸ *Ibid.* (1933) no. 24.

⁹ *Ibid.* (1924) no. 23.

¹⁰ *Ibid.* (1929) no. 76.

¹¹ *Ibid.* (1930) no. 34.

¹² *Ibid.* (1931) no. 24.

¹³ *Ved.* (1938) no. 11.

¹⁴ See *supra* p. 234.

¹⁵ *Dok.* 1, 644-47.

¹⁶ *SDD* 1, 195-206.

¹⁷ *Ibid.* 1, 27-34.

¹⁸ *SU RSFSR* (1921) no. 41.

¹⁹ *SDD* 1, 75-86.

²⁰ *Ibid.* 1, 50-62.

²¹ *Ibid.* 1, 171-183.

²² *Ibid.* 1, 155-171.

²³ Article 12 of the Treaty with Turkey (March 16, 1921) reads as follows:

"Every inhabitant of the territories which prior to 1918 were part of Russia and which by the Government of the RSFSR are now recognized as being under the sovereignty of Turkey, in conformity with the present treaty, has the right to leave Turkey freely and take with him his personal property or its value. A similar right is extended to the inhabitants of the Batum territory, sovereignty over which is transferred by the present treaty from Turkey to Georgia."

In the Armistice Agreement of June 12, 1918 (Article 21) between the RSFSR and the Ukraine, the signatories undertook upon the basis of reciprocity, not to hinder in any way and to grant freedom and the opportunity to each others' citizens to leave for their homeland. Klyuchnikov and Sabanin, *Mezhdunarodnaia politika noveishego vremeni v dogovorakh, notakh i deklaratsiakh*, vol. 2 (1926) 142-44.

A separate procedure was arranged between the Ukr. SSR and Estonia (*SDD* 1, 207-211; LN Treaty Ser. 121-142) and Ukraine and Latvia (*SDD* 1, 86-97).

The Agreement between USSR-Mongolia, October 3, 1924, formalized earlier domestic measures unilaterally promulgated by each of the signatories. By the resolution of the Central Executive Committee of the USSR of Sept. 7, 1923, Moscow accorded to Russian citizens, who had emigrated to Mongolia the right to transfer to Mongolian nationality, the Mongolian government having already acceded to such a simplified process of acquisition of nationality through its Resolution of July 18, 1923.

²⁴ Soviet Repatriation treaties: With Austria of July 5, 1920 (*SDD* 1, 117); Hungary of May 21, 1920 (*Ibid.* 1, 125-27); Poland of Oct. 12, 1920 (*Ibid.* 2, 108-20); Germany, April 19 and 23, 1920, and July 7, 1920 (*Ibid.*, 1, 1921, 128-134); Turkey, of March 28, 1921 (*Ibid.* 2, 121-23) Cf. also agreement with Hungary of July 28, 1921 (*Ibid.* 2, 86-88) Supplementary agreements with Germany of Jan. 22, 1921 and of May 6, 1921 (*Ibid.* 2,

pp. 89, 94) Britain, February 12, 1920 (*Ibid.* 1, 120-123; France, April 20, 1920 (*Ibid.* 1, 156-162) and Italy, April 27, 1920 (*Ibid.* 1, 141-42). Treaties relative to refugees: Lithuania, June 13, 1920, and June 30, 1920; Latvia, Nov. 16, 1920; Estonia, August 19, 1920 (*Ibid.* 1, 143-47, 148-150, 151-55, and 163-64). See also the agreement on Repatriation between the RSFSR and the Ukrainian SSR and Poland of Oct. 12, 1920 (*Ibid.* 2, 108-120); The Protocol of Oct. 3, 1921, between RSFSR and Ukraine and Hungary, with the participation of Latvia and the international Red Cross (*Ibid.* 3, 80-83) and the Agreement with Finland of Aug. 12, 1922 (*Ibid.* 4, 28-36). Cf. also Supplement to Articles 7 and 8 of the Treaty with Latvia of Aug. 11, 1920 (*Ibid.* 1, p. 39) Articles 11 and 25 of the Treaty with Finland of Oct. 14, 1920 (*Ibid.* 1, 81 and 90) and with Estonia article 9, of Feb. 2, 1920 (*Ibid.* 1, 107).

²⁵ *SU RSFSR* 1921, no. 72 of note 4.

²⁶ *Ibid.* (1922), no. 1 of note 5.

²⁷ *Ibid.* (1921) sec. 725.

²⁸ *SZ* (1925) no. 77.

²⁹ *Ved.* (1940) no. 31.

³⁰ *Ibid.* (1941) no. 13.

³¹ Meder, *Das Staatsangehörigkeitsrecht des UdSSR und die Baltischen Staaten* (1950) 59-60.

³² *Ved.* (1945) no. 78.

³³ *Ibid.* (1946) no. 2.

³⁴ *Ibid.* (1946) no. 2.

³⁵ June 14, 1946, *Ibid.* (1946) no. 2.

³⁶ Decree of July 14, 1946, *Ved.* (1946) no. 21.

³⁷ Decree of July 14, 1946, *Ved.* (1946) no. 21.

³⁸ Decree of October 5, 1946, *Ibid.* (1946) no. 36.

³⁹ Decree of May 28, 1947, *Ved.* (1947) no. 18.

⁴⁰ Decree of September 26, 1946, *Ved.* (1946) no. 36.

⁴¹ *Ved.* (1948) no. 72.

⁴² Geilke, *Geltende Staatsangehörigkeitsgesetze Sowjetunion* (1964) 109-111.

⁴³ *Ved.* (1945) no. 78.

⁴⁴ *Ved.* (1946) no. 39.

⁴⁵ *UNO Yearbook* 1946-47, 164-170. See also, Draft Resolution submitted to the General Assembly (3rd Committee on Feb. 4, 1946, *Izvestia*, Feb. 6, 1946).

⁴⁶ *Izvestia*, March 16, 1947.

⁴⁷ *Trud*, March 10, 1949. Cf. also *Pravda*, September 3, 1949; cf. *UNO Yearbook*, 1947-48, 126 ff, and *ibid.* 1948-49, 188-89.

⁴⁸ Egorev, *Pravovoe polozhenie inostrantsev v SSSR* (1926) 14.

⁴⁹ Geilke, note 42, 276.

⁵⁰ *Nazi-Soviet Relations*, p. 106.

⁵¹ Geilke, note 42, 220.

⁵² Geilke, note 42, 220.

⁵³ Geilke, note 42, 221; Protocol with Estonia, Oct. 15, 1934, Treaty with Latvia, Oct. 30, 1939.

⁵⁴ Geilke, note 42, 93-94.

⁵⁵ Geilke, note 42, 274, *Ved.* (1941) no. 13.

⁵⁶ *Soviet-Polish Relations* (1961) 107-108.

⁵⁷ *Ibid.* 171.

⁵⁸ *VPSS*, 1944, II, 202.

⁵⁹ *Ibid.* (1944) II, 202.

⁶⁰ *Ibid.* (1944) II, 230-232.

⁶¹ *Ved.* (1944) no. 35.

⁶² *Ved.* (1944) no. 38.

⁶³ *Izvestia*, July 7, 1945. British and Foreign State Papers, 1949, Part II, vol. 155, 840-43.

- ⁶⁴ Decrees of June 22, and July 14, 1944.
- ⁶⁵ Geilke, note 42, 260 ff.
- ⁶⁶ *Ved.* (1951) no. 23.
- ⁶⁷ *SDD*, 19, 110.
- ⁶⁸ *SDD*, 11, 31-32, and *Izvestia*, June 31, 1945. The agreement of July 10, 1946, extended the right of option to Czechoslovak settlers in Volhynia, which until World War II was the part of Poland. *Izvestia*, July 11, 1946.
- ⁶⁹ *VPSS*, 1945, 64.
- ⁷⁰ *Ibid.* (1946) 270.
- ⁷¹ *Ibid.* (1946) 297.
- ⁷² Geilke, note 42, 33-34.
- ⁷³ 85th Congress (2nd session), Document no 122, The Soviet Empire, 15 ff.
- ⁷⁴ Geilke, note 42, 93 ff.
- ⁷⁵ *Dok.* 3, 598.
- ⁷⁶ *Dok.* 3, 270.
- ⁷⁷ *Dok.* 3, 552.
- ⁷⁸ *Dok.* 3, 178.
- ⁷⁹ Kulski, *Peaceful Coexistence* (1959) 404, *Dok.* 3, 404.
- ⁸⁰ See *supra*.
- ⁸¹ 28 *AJIL* (1934) suppl. 8.
- ⁸² *U.S. Foreign Relations, The Soviet Union, 1933-39*, 561-62.
- ⁸³ *Ibid.* at 530.
- ⁸⁴ *Ved.* (1938) no. 11.
- ⁸⁵ *Ved.* (1947) no. 10, and *Ibid.* (1948) no. 6.
- ⁸⁶ *Ved.* (1953) no. 49.
- ⁸⁷ *Ved.* (1958) no. 28.
- ⁸⁸ *SZ*, 1931, no. 24.
- ⁸⁹ See *supra*.
- ⁹⁰ E.g., article 3 of the resolution of Oct. 29, 1924, *SZ*, 1924, no. 76.
- ⁹¹ *SU UkSSR* 1919, no. 350.
- ⁹² Cf. articles 241-245 of the Ukrainian Administrative Code of 1927.
- ⁹³ May 27, 1933, *SZ SSSR*, 1933, no. 34.
- ⁹⁴ *SDD* 10, 20.
- ⁹⁵ *Pravda, Izvestia*, Oct. 31, 1956.
- ⁹⁶ Cf. Grzybowski, *The Socialist Commonwealth of Nations* (1964) 11-17, Sipkov, "Settlement of Dual Nationality in European Communist Countries," *AJIL*, 1962, 1010-1019. Soviet Union concluded dual nationality conventions with the following countries: Yugoslavia (May 22, 1956, *Ved.*, 1956, no. 16); Hungary (August 24, 1957, *Ved.*, 1958, no. 1); Rumania (Dec. 12, 1957, *Ved.*, 1958, no. 5); Albania (September 18, 1957, *Ved.*, 1958, no. 9); Czechoslovakia (October 5, 1957, *Ved.*, 1958, no. 17); Bulgaria (Sept. 4, 1957, *Ved.*, 1958, no. 7); North Korea (Dec. 16, 1957, *Ved.*, 1958, no. 4); Poland (January 21, 1958, *Ved.*, 1958, no. 9); Mongolia (August 8, 1958, *Ved.* 1958, no. 35).
- ⁹⁷ January 21, 1963, *Ved.*, 1963, no. 30.
- ⁹⁸ March 31, 1965, *Ved.*, 1966, no. 15.
- ⁹⁹ *ILC* 1953, 173.
- ¹⁰⁰ *Ibid.* (1953) 194.
- ¹⁰¹ *Ibid.* (1953) 218-19.
- ¹⁰² *Ibid.* (1953) 226-27.
- ¹⁰³ *VPSS* 1948, 2, 493-509.
- ¹⁰⁴ *UNO Yearbook*, 1948, 532.
- ¹⁰⁵ *UNO Yearbook*, 1948-49, 327-33.
- ¹⁰⁶ *Ved.* (1956) no. 14.
- ¹⁰⁷ *SDD* 16, 66.
- ¹⁰⁸ *Ved.* (1956) no. 14.

¹⁰⁹ *Ved.* (1956) no. 10.

¹¹⁰ *Ved.* (1954) no. 12.

¹¹¹ *Ved.* (1957) no. 8.

¹¹² *Ved.* (1958) no. 28.

¹¹³ Cf. Polish Criminal Code of 1932, Arts. 3-8. Italian Criminal Code of 1930, Arts. 4-10. The Yugoslav Criminal Code of 1928, Arts. 3-13. The Greek Criminal Code of 1950, Arts. 5-11. The Swiss Criminal Code of 1937, Arts. 3-8.

¹¹⁴ *SDD* lists a number of such conventions.

¹¹⁵ *SDD* 19, 230.

¹¹⁶ *Ved.*, 1958, no. 35.

¹¹⁷ *SDD* 19, 266.

¹¹⁸ *Ibid.* 19, 294.

¹¹⁹ *SDD* 20, 329.

¹²⁰ *SDD* 19, 358.

¹²¹ *SDD* 19, 384.

¹²² *Ved.* (1958) 35.

Chapter V

ORGANS OF INTERNATIONAL RELATIONS

I. CENTRAL ORGANS REPRESENTING THE SOVIET UNION

A. Drive Towards Unity

The organizations which represent the Soviet Union in its international relations are the result of prolonged experimentation. In the early days, while the central government in Moscow played an important part in determining the foreign policy of revolutionary Russia, it was not the only place where foreign policy was formulated. Within the former Russian empire a number of Soviet republics representing various national groups was established, and their commissariats for foreign affairs were, theoretically at least, in charge of international relations. The common policy established in Russia for all Soviet republics at that time was the result of formal agreements between the RSFSR and the other republics dealing with various aspects of defense and foreign policy.

This period came to an end with the agreement of December 30, 1922, concluded by the RSFSR, Ukrainian SSR, Byelorussian SSR and Transcaucasian SSR (Georgia, Azajberdjan and Armenia), to establish the Union of Soviet Socialist Republics. The Union obtained the exclusive right to represent the Union and its republics in international relations.

A new regime was introduced by the Law of February 1, 1944. This gave the Union republics the authority to enter into direct relations with other powers, to make treaties and to exchange diplomatic and consular missions.¹

The first organ set up to represent the RSFSR was the Council of People's Commissars, established by the decree of the Second All-Russian Congress of the Soviets of November 8, 1917. Its duty was to implement the policy determined by the Congress while it was in session, or of its Executive Committee between the sessions. The Council of People's Commissars also included a post of People's Commissar for Foreign Affairs.² This practice was copied in other Soviet republics as they emerged from the civil war and the nationalist and separatist regimes collapsed. It was also followed by the local Soviets in the Pri-Amur region and in a number of Siberian cities and territories which, because of the ineffectiveness of the central government in Moscow and chaotic conditions in Russia, were forced to rely upon their own resources, and to manage their own international affairs. Far Eastern

regions of Russia long have lived in awareness of the proximity of China and, again by default of the Moscow government, had to assume direct control of the Russo-Chinese frontiers, to deal with Japanese interests, and generally to control foreign trade relations in this area. Thus local governments of the border regions frequently included separate departments for border and frontier affairs.

As a rule, local soviets of the Far Eastern region sought support and guidance from the Bolshevik regime in Moscow. They followed the practice of submitting the names of appointees to the post of foreign commissar of the local soviet for the approval of the Foreign Commissar of the Moscow government. In Vladivostok, the main Russian port in the Far East, the commissar for border and frontier relations was chosen by the Moscow government. Furthermore, in order to rationalize the management of the foreign affairs of Russia, the Moscow Commissariat sought to establish some division of functions between the local and central governments. The central government also used the regional (krai) soviets to control the activities of local soviets in this respect.

During this early period, instructions issued by the People's Commissar for Foreign Affairs (February 22, 1918) pointed out that the main effort of the local soviets should be directed toward replacing former imperial consuls in the Chinese border cities with loyal personnel, to obtain control of Russian consulates in China and to train personnel for the consular posts in that area. Instructions stressed the need to protect the interests and the property of Russia in Chinese territories, and in particular the need to continue to control the Chinese Eastern Railway. Soviet policy vis-a-vis China was to rely on the binding force of the Russo-Chinese Treaty of 1896, and on the Decree on Peace. Local authorities were warned of Japanese intentions toward Siberia, and were told that the governmental regime in Northern China was reactionary and that a revolution was in progress in Southern China.³

While the Bolshevik regime sought to extend its influence by coordination of efforts of the local soviets which were taking over power in Russia, resolutions of the Third All-Russian Congress of the Soviets of January 15, 1918, outlined the scheme for central direction of all matters of foreign relations, later given effect in the Constitution of the RSFSR of 1918. The power to represent the state in international relations belonged to the Council of People's Commissars, under the general supervision of the Congress of the Soviets and of its Executive Committee. Decisions concerning cession of territory, state frontiers, foreign loans, legislation regarding citizenship and treatment of aliens, declaration of war, ratification of peace treaties and determination of general principles of foreign policy all were the responsibility of the Congress and of the Executive Committee.

This scheme followed roughly the distribution of responsibilities and functions in the area of foreign relations in other countries. What was missing was an organ which could function as the head of state as found in more

traditional regimes. This missing element was first provided for in the decree of the Council of People's Commissars of January 22, 1922,⁴ which amended the procedures laid down in the decree of May 26, 1921, on the Statute of Soviet Organs Abroad⁵ regarding the appointment of the representatives of the RSFSR to diplomatic posts in foreign countries. According to the new regulations, diplomatic representatives were to be appointed and recalled by the decree of the Central Executive Committee, which thus received a function normally reserved to the head of the state. Only *chargés d'affaires ad interim* were to be appointed and recalled by the People's Commissariat for Foreign Affairs.

This scheme of distribution of functions in the highest echelons of the Soviet government, with the Executive Committee acting as head of state, was upheld in the Agreement on the Formation of the Soviet Union of 1923, the Constitution of the USSR of 1924, and the Constitution of 1936.

In 1944, however, the Soviet Union was faced with a new situation. The war was nearing its end, and plans were being made for the United Nations Organization. In order to strengthen its position in the United Nations, the Soviet government had to abandon the principle of the Union government's monopoly in foreign relations of the Soviet Union and to accept the limited participation of the Union republics in international relations. The Constitution was properly amended, and Union republics were authorized to accept and to send diplomatic missions, make treaties, and apply for membership in international organizations.⁶

On the whole, the Soviet scheme of central authorities in charge of foreign relations was merely an adaptation to Soviet conditions of traditional state models. In one respect, however, it represents an important innovation. One of the first steps in the social and economic reorganization of Russia was the nationalization of all foreign trade organizations within Russia and the creation of a government monopoly of foreign trade by the decree of the Council of People's Commissars of April 22, 1918. As a result it became necessary to provide for a system of governmental agencies which would assume responsibility for economic cooperation with other countries.

However, it was a long step from the principle of governmental monopoly to the creation of a mechanism for foreign trade. Because of war, both civil and external, the depreciation of currency, and disruption of economic life in Russia in general, foreign trade came to a standstill. On April 11, 1920, a People's Commissariat of Foreign Trade was established, but even after the Soviet Union had reestablished its trade relations with the capitalist West, foreign trade, though strictly controlled, was not monopolized. Neither the 1918 Constitution nor the Agreement of 1922 to establish the Union, nor even the Constitution of 1924, listed the monopoly of foreign trade as exclusively within the competence of the Union government. The Agreement of 1922 provided that the Union would establish a system of foreign and internal trade; moreover, the Constitution of 1924 stated that the Union should direct foreign trade. However, both the Agreement of 1922 and the Con-

stitution of 1924 provided for the creation of a separate ministry of foreign trade to handle this aspect of the foreign relations of the Soviet Union. It was only in article 14 of the Constitution of 1936 that Union control of foreign trade was linked to the government monopoly of foreign trade, providing that "foreign trade on the basis of the governmental monopoly" is within the exclusive jurisdiction of the government of the Union.

B. Legislature and Executive: Division of Responsibility

At the present time, the highest authorities responsible for the management of foreign relations of the Soviet Union include the Supreme Soviet of the USSR, with its Presidium; the Council of Ministers of the USSR, including its chairman; the Ministry of Foreign Affairs; and the Ministry of Foreign Trade; Supreme Soviets with their presidia and councils of ministers, their chairmen, and ministers of foreign affairs of those Union republics which have availed themselves of the authorization to maintain relations with foreign states under the law of February 1, 1944.

The powers of the highest governmental authorities in international relations are defined in article 14 of the Constitution of the Union (1936). They represent the Soviet Union in international relations, make, ratify and denounce treaties and legislate matters regarding the relations of Union republics with foreign countries. The Union Government decides issues of peace and war and admits new republics to the Soviet Union. It also controls foreign trade and is competent to enact legislation regarding citizenship and the status of aliens.

1. Supreme Soviet of the Union and the Presidium

All powers reserved to the Union, except those which are specifically assigned to other organs of the Union (the Presidium of the Supreme Soviet and the Council of Ministers) are within the competence of the Supreme Soviet.

According to the Constitution, the powers of the Presidium of the Supreme Soviet are divided into two categories: those which the Presidium exercises at all times, and those which it exercises during the period between sessions of the Supreme Soviet. In the area of foreign policy it is the responsibility of the Presidium, when the Supreme Soviet is not in session, to declare war, in the case of armed aggression against the Soviet Union or in case of having to fulfill international treaty obligations establishing mutual defense alliances against aggression (article 49). Other functions of the Presidium of the Supreme Soviet in the field of foreign relations, such as ratification and denunciation of international treaties, creation of diplomatic ranks for Soviet representatives abroad, appointment of diplomatic representatives of the Soviet Union in foreign countries (ambassadors and ministers), and accreditation and

recall of foreign diplomatic representatives to the Soviet Union, also are not restricted to the intersession periods. The Presidium has moreover, the exclusive responsibility of appointing its representatives to negotiate treaties which require its ratification.

Nevertheless, in Soviet constitutional practice Presidium functions occasionally are performed by the Supreme Soviet. For example, in order to underscore the importance of the 1942 Treaty of Alliance with Britain, concluded after the German attack upon the Soviet Union, the Treaty was ratified by the Supreme Soviet in full session, although according to the Constitution this function normally belonged to the Presidium. The exceptional character of this procedure is emphasized by the fact that, according to the law of August 20, 1938,⁷ ratification and denunciation of treaties with foreign powers was the exclusive responsibility of the Presidium, which in this case assumed functions which in other constitutional systems traditionally belong to the head of state. The difference between the powers of the Presidium and those of heads of state in other constitutional systems lies precisely in the fact that the Presidium is not required to consult the Supreme Soviet, while heads of state must seek either approval or advice from the legislative organs of their governments.

The flexibility of Soviet constitutional practices may be explained by the fact that all governmental authority in the Soviet Union ostensibly had its origin in the will of the electorate, either directly or indirectly expressed. The Presidium is a part of the Supreme Soviet, and as such is charged with specific duties which, although exceeding pure legislative function, nevertheless draw their authorization from the act of popular election.

Another example of the flexible interpretation of the Constitution is the practice of legislative decrees issued by the Presidium. According to the 1936 Constitution, legislative power was exclusively reserved to the Supreme Soviet. Nevertheless the Presidium continued the practice of enacting legislative decrees dealing with citizenship, status of aliens and foreign trade, which, according to the Constitution of 1936, called for legislative action and therefore could be deemed within the exclusive jurisdiction of the Supreme Soviet.

In the final analysis, while the Soviet regime was outwardly shaped to conform to the generally accepted system of the highest governmental authorities in charge of foreign relations, it also has remained true to the fundamental spirit of Soviet constitutionalism, with its flexibility and absence of a strict delineation of functions. The Presidium, although made to function as the head of state, retained prerogatives and powers of an agency belonging to the legislative department. On ceremonial occasions the Chairman of the Presidium of the Supreme Soviet assumes the role of the head of state in the same manner as the Chairman of the Bundesrat in the Swiss Confederation. Owing to the peculiarities of the Soviet political regime, ceremonial and representative functions of the Chairman of the Presidium are completely overshadowed by the public function of the First Secretary of the Com-

munist Party and of the Chairman of the Council of Ministers. At times when these two functions coincide in one person the representative role of the Chairman of the Presidium is of little significance.

2. The Council of Ministers and the Chairman of the Council

The Council of Ministers of the Soviet Union exercises general control of foreign relations with other countries (article 68 of the Constitution). The Council determines the main orientation of foreign policy, makes all major policy decisions, and controls all negotiations with foreign powers. Those treaties which do not require formal ratification by the Presidium of the Supreme Soviet are negotiated by representatives appointed by the Council, in its name.⁸ The Council makes appointments to all diplomatic posts which are not made by the Presidium.⁹ The same applies to members of special delegations and missions sent abroad, particularly those appointed in the execution of treaties and international agreements.

The Chairman of the Council of Ministers although not charged specifically with duties in the area of foreign policy, because theoretically all powers reside in the Council itself, plays an important role in international relations. He represents the government of the Soviet Union in direct contacts with foreign governments or their missions, and various documents are issued under his signature as the result of governmental decisions. Furthermore, chairmen of the Council of Ministers are, as a rule, persons of great political influence (Stalin, Molotov, Malenkov, Khrushchev, Kosygin), who sometimes also hold the position of First Secretary of the Communist Party of the Soviet Union. The chairman outranks all other members of the government and in the foreign policy area is the most important factor in policy formation and implementation. In the presence of such a strong personality, the Minister of Foreign Affairs is reduced to a rather technical role as head of the department handling the technical aspects of Soviet foreign relations.

3. The Minister and the Ministry of Foreign Affairs

The primary responsibility of the Minister and his department is to maintain relations with foreign powers and all international organizations involving non-economic interests of the Soviet state. The Minister is the main instrument of action emanating from the Presidium of the Supreme Soviet, or from the Council of Ministers. The Ministry, in fact, serves as the personnel office for the foreign service of the Soviet Union.

The Ministry of Foreign Affairs was known as the People's Commissariat for Foreign Affairs before the law of March 15, 1946.¹⁰ The responsibilities of the Ministry were specified in the Statute of the People's Commissariat, adopted November 12, 1923¹¹, which remains in force as follows:

a. protection of political and economic interests of the USSR and of Soviet citizens abroad;

- b. execution of treaties and agreements with foreign countries;
- c. cooperation with the governmental institutions of the Union and of the Union republics in the enforcement of treaties and agreements with foreign countries, and the realization of rights established by these treaties;
- d. supervision of the competent government authorities as regards the execution of international treaties and agreements.

Diplomatic missions abroad are directly responsible to the Ministry for foreign affairs. The Ministry also controls, through the local diplomatic missions, activities of all other Soviet missions in foreign countries, and assures conformity with governmental policy and observance of Soviet and local laws. Furthermore, the Ministry of Foreign Affairs participates in the appointment of diplomatic personnel for posts abroad.

After enactment of the decree of January 22, 1922,¹² the appointment and recall of diplomatic agents in the highest category was made the responsibility of the Central Executive Committee (VCIK). Diplomats of lower ranks were appointed and accredited by the Commissariat for Foreign Affairs. Following the reform of the diplomatic ranks by the May 9, 1941 decree of the Presidium, the rank of representative plenipotentiary was replaced by two classes of diplomatic officers, ambassadors and ministers. These categories were created in addition to the rank of *chargés d'affaires*. The Presidium of the Supreme Soviet appoints diplomatic agents in foreign countries with the rank of ambassador or minister by issuing the proper decrees,¹³ while the *chargés d'affaires* continue to be appointed by the Council of Ministers.¹⁴

All such appointments, either by the Presidium of the Supreme Soviet or by the Council of Ministers, require the participation of the Ministry of Foreign Affairs because all documents attesting to the position, function, and post of appointment, as well as transfers and recalls, require the countersignature of the Minister of Foreign Affairs in addition to the signature of the Chairman of the Presidium or of the Council of Ministers.¹⁵

In addition, the Minister of Foreign Affairs appoints *chargés d'affaires ad interim* for the period of absence of the head of a Soviet mission, or for the period following his recall until a new appointment is made. He also appoints the personnel of the consular service.

Ministers of foreign affairs of republics maintaining foreign relations with other countries appoint the personnel of foreign missions in conjunction with their presidia of supreme soviets and councils of ministers.

The Minister and the Ministry of Foreign Affairs issue instructions to diplomatic missions abroad regarding the conduct of their affairs. In cases when these instructions concern trade and financial policies of the Soviet Union, instructions are issued in cooperation with other interested ministries. Attachés and agents representing the interests of the armed services are appointed in cooperation with the competent ministries of the Union.

4. *The Ministry of Foreign Trade*

A unique feature of the Soviet governmental organization is the role and functions of the Ministry of Foreign Trade. As a result of the decision to nationalize foreign trade and to control economic cooperation with other countries, a system of government agencies was established to manage all foreign commercial relations.

Although set up in 1920, the Statute defining the functions and internal organization of the Ministry was not passed until November 12, 1923.¹⁶ The authority of the Ministry extends over a network of foreign trade agencies abroad as well as over a considerable system of specialized agencies at home, which include import and export agencies, the International Chamber of Commerce, and a Foreign Trade Arbitration Board.¹⁷ Ministry functions include:

- a. organization of the import and export organizations in foreign trade relations;

- b. supervision of foreign trade operations, and of the legal aspects of the commercial transactions undertaken by the importing and exporting organizations;

- c. control and supervision of imports and exports by licensing;

- d. negotiation of international economic agreements, and implementation of economic plans for foreign trade.

Although commercial treaties and agreements, including those dealing with economic assistance and technical and scientific cooperation, are included in official publications of the USSR, the Ministry of Foreign Trade publishes them in its monthly publication *Foreign Trade*, which also lists information concerning the status of foreign trade associations authorized to make contracts in foreign commerce, the personnel authorized to sign such contracts and to represent various lines of Soviet products.

II. SOVIET LAW OF DIPLOMACY

A. *The Period of Transition*

At the fall of the imperial regime, Russia was one of the focal points of the diplomatic activities of the world, maintaining diplomatic relations with the vast majority of the members of the contemporary international community. Russian diplomatic practice conformed with the international rules of diplomacy, based upon the General Act of the Congress of Vienna. Among the members of the diplomatic corps, alliances in the war against the Central Powers assured an exceptional position to the embassies of the Entente.

Moreover, the role of the diplomatic corps in Russia had been greatly

enhanced by the style of the imperial government and the constitutional powers of the monarch, who had been the sole master of foreign policy, with the minister of foreign affairs directly responsible to him. At the time of the March 1917 revolution, which installed a liberal regime, St. Petersburg was perhaps the only major capital in the world in which "old-type" diplomacy still was practiced, in which formal privileges of the ambassadorial rank, including free access to the person of the tsar and participation in the life of the court, were of practical importance in the conduct of inter-governmental business.

The October 1917 revolution, which installed the Bolshevik regime, initiated a drastic change in the style of diplomacy. The first circular telegram of the People's Commissar for Foreign Affairs, December 5, 1917, addressed to Russian diplomatic missions abroad, called for a declaration of support for the new regime and its new policies, including the conclusion of a peace treaty with the Central Powers. Heads of mission who were unwilling to declare their loyalty to the new regime were ordered to relinquish their duties and to transfer their functions to subordinate members of their missions who would be willing to recognize the authority of the Soviet government.¹⁸ This measure was hardly calculated to keep the channels of communication with foreign governments open because four days later, December 9, 1917, the People's Commissar, in view of the almost complete silence from most of the Russian diplomats abroad, summarily relieved them of their duties,¹⁹ thereby isolating the revolutionary government from the rest of the world.

As the new policy was to abandon the alliance and seek peace, the maintenance of Russian missions abroad would have increased the opportunities for pressure from former allies to continue the previous policy. During the period immediately following the revolution, the Bolshevik regime proceeded with armistice and peace negotiations, paying little attention to the presence of foreign missions in the capital. It adopted the practice of communicating its decisions to foreign governments and the public, both in Russia and abroad, by means of open declarations through radio and press facilities, clearly designed as pressure and propaganda techniques.

This policy did little to enhance intimate relations between the new regime and the accredited diplomatic missions. The already less than cordial relations of the diplomatic corps with the Russian government were further strained by a series of diplomatic incidents, one of the most important of which was the arrest of the Rumanian Minister, Diamandi as a reaction against the continued fighting of the Rumanian army on the side of the allies in Besarabia. On January 1, 1918, the diplomatic corps protested this high-handed action by the Soviet government.²⁰ Diamandi was released, and on January 13, 1918, the Soviet government broke diplomatic relations with Rumania.²¹

During the first phase of peace negotiations in Brest-Litovsk, and the attendant propaganda battle with Germany and her allies, the Soviet government made ample use of diplomatic channels to transmit information to the

West. This somewhat one-sided cooperation ended when, under the threat of the German advance, the Bolshevik regime removed its seat to Moscow and the diplomatic corps went to Volodga, where security conditions were better than in St. Petersburg or Moscow. This reduced the usefulness of diplomatic missions in Russia, with the effect that in most instances foreign diplomatic missions were reduced to a skeleton staff.

After the conclusion of the Brest-Litovsk Peace Treaty and the successes of the March, 1918, German offensive in the West, relations between allied governments and the Bolshevik regime deteriorated even further. Vast areas of Russia were falling into chaos due to counter-revolutionary and centrifugal movements, the emergence of new regimes, emancipation of subject peoples, and military action by Czech legionnaires. Russia's contacts with the West reached their lowest point in July 1918, and on the eighteenth of that month the foreign diplomatic corps left Volodga for Archangelsk, which at that time was under allied occupation.

The declaration of the Commissar for Foreign Affairs issued on this occasion (July 24, 1918)²² showed real concern for the state of Russian diplomatic relations for the first time. The Soviet government regretted the move and, although the declaration also contained a protest against allied landings in Archangelsk and allied support for the armed resistance to Soviet authority by Czech legionnaires, the government expressed no desire for the rupture of diplomatic relations and hoped that the departure of the "Volodga diplomats" would not be interpreted in that sense.

While official channels of communication between the Bolshevik regime and Western governments were falling apart, the new regime sought to replace them with more reliable, though less conventional, methods of contacts both with governments and political and business circles in Western Europe and the United States. The Soviet government adopted a practice of appointing "Representatives of the People's Commissariat for Foreign Affairs," without asking the countries concerned for their accreditation or formal admission. To this end, the new Russian regime customarily employed persons already residing in the various foreign countries.

One of the first unofficial representatives was Maxim Litvinov, who was appointed Interim Representative of the People's Commissariat for Foreign Affairs in November 1917 while a resident in England. One of his first acts was to protest the drafting of Russian nationals into service in the British Army, in accordance with an agreement with the Russian Imperial Government. Litvinov contended that since Russia had concluded a peace treaty with the Central Powers, the agreement with the imperial government was no longer applicable.²³ In Sweden, Vorovsky was appointed, with power to act in all Scandinavian countries.²⁴ Similarly, L. Martens, a Russian national resident in New York, was made representative in the United States.²⁵

Vorovsky, Litvinov, and Martens used titles and style which indicated their connection with the Bolshevik regime (e.g., Plenipotentiary ad interim of the People's Commissariat for Foreign Affairs, or Soviet Representative

Plenipotentiary), similar to that used by the Soviet Commissariat for Foreign Affairs in addressing heads of foreign missions in Russia. The Commissariat made no distinction between the ranks of foreign diplomats, whether ambassador or minister.

On one occasion the Soviet government endeavored to secure diplomatic status for Litvinov in England. However, in August 1918 the British government issued a deportation order against Litvinov and members of his mission. While Litvinov protested this order, the Soviet government promptly discovered an anti-Soviet plot organized by British and French diplomats and arrested them. Later, when Litvinov was detained, the Soviet government proposed the exchange of the arrested diplomats for Litvinov and his staff, insisting upon guarantees of the inviolability of their persons and luggage by the governments of Britain, Holland, Norway and Sweden.²⁶

Hoping to mobilize the support of business circles for recognition of the Soviet regime, the Soviet government sometimes employed a trade argument. On March 19, 1919, e.g. Martens submitted a memorandum to the State Department in Washington, which he signed as RSFSR Representative in the United States. He explained the origin of the Soviet regime and its policies, the political and economic situation in Russia, and offered economic cooperation with the United States. Martens declared that he was authorized by the government of the RSFSR to announce that in case trade relations with Russia were established, the new government in Russia would deposit in American and European banks the equivalent of two hundred million dollars in gold to guarantee payment of its orders.²⁷

Martens' activities ended with his arrest and an order for his deportation. Informed of this development, the Soviet government pointed out that it had dealt with American citizens and interests in Russia with full circumspection and that American diplomatic and consular missions in Russia were accorded full diplomatic privileges. The Soviet government announced that, should Martens be denied his rights, it would have to resort to retaliation against American citizens in Russia.²⁸ The departure of Martens from the United States caused cancellation of all Russian orders in the United States.

Another example of the economic diplomacy at that time was a circular letter of the Department of Foreign Trade of the People's Commissariat for Commerce and Industry of July 18, 1918, which instructed Soviet commercial representatives to invite foreign firms to participate in the Nizhnyi Novgorod festival, in order to promote foreign trade and economic cooperation with business circles abroad.²⁹

In 1920 the system of semi-official delegates of the Soviet regime was developed even further. For example, Soviet Red Cross representatives, sent to organize the repatriation of Russian Prisoners of War, and trade representatives in Britain, Sweden, Norway and Denmark, never felt restricted to activities in their delegated fields. Invariably, they were involved in transmitting diplomatic correspondence between the Soviet government and various other governments in connection with military action against the

counterrevolutionary movements in Russia or the war with Poland. Sometimes their function was to maintain contact with a government other than that of the country where they were supposed to be active. So, for instance, the unofficial Soviet representative in Copenhagen transmitted notes and memoranda from the Soviet government to the French government through the services of the French Consul in Copenhagen.³⁰ The head of the Soviet Trade Delegation in London assumed the full role of diplomatic representative of Russia in Britain.³¹

At times, admission of a Soviet trade representative to a given country was interpreted by the Soviet government as the equivalent of formal recognition of the Soviet regime by the government of that country. A pertinent example is the Soviet-Norwegian trade negotiations. The Soviet government insisted on negotiations in Norway and dispatched Litvinov to Denmark in August 1920 to await a visa from the Norwegian government. Initially the Norwegian government was not very enthusiastic about this idea;³² later, however, it agreed to Litvinov's presence in Norway for the purpose of trade negotiations. The Soviet government accepted this invitation as the equivalent of establishing normal relations with Norway.³³

Trade and economic agreements were considered by the Soviet government to comprise one of the most effective platforms for reestablishing normal relations with other countries. In trade negotiations with Britain and Norway, the Soviet government insisted on extending the functions of Soviet trade representatives to include some of the duties of true diplomatic, or at least consular, representatives. On September 23, 1920, Litvinov wrote to the Norwegian Minister of Trade that, during similar negotiations with the British government, the British were inclined to meet Soviet requests. "The British draft [of the trade] agreements provided," Litvinov wrote, "for some diplomatic privileges for trade plenipotentiaries. It gave them the right to protect their nationals, issue visas, notarize documents and to perform other consular functions."³⁴

But any other reason for the restoration of diplomatic relations was just as good. In his telegram to the Russian Trade Delegation in Czechoslovakia, the Soviet Foreign Commissar instructed them to use the presence of the large numbers of Russian prisoners of war in Bulgaria as an excuse to restore diplomatic relations with that country, even if limited to the question of prisoner exchange. "The main purpose," wrote Chicherin, "is to arrange for the exchange of delegations, which would have full official status with diplomatic immunities, right of couriers, use of cipher, telegraph, and radio. We are interested in an effective renewal of relations, although it would bear the name of the Mission for the Affairs of the POW."³⁵

On occasion, the Soviet mission would avail itself of supposed rights which it did not really have. For instance, in Constantinople the Soviet Trade Delegation displayed the flag, although only diplomatic missions have the right to display the flag. The Commissar for Foreign Affairs protested when the Italian and British Commissioners of Constantinople, at that time

under Allied occupation, ordered the removal of the flag.³⁶

On two occasions changes in a country's situation (e.g., revolution, or emancipation from hostile occupation) were used by the Soviet government to withdraw the recognition it had granted earlier. One instance was the case of the Polish mission for the affairs of refugees; another was the overthrow of the imperial regime and the establishment of the republic in Germany.

During the 1914-1918 war, Russian authorities evacuated almost three million people from western provinces of Russia, among them a considerable number from the Kingdom of Poland. Following the signing of the Brest-Litovsk Treaty, by which Russia renounced her rights to Poland and other Western parts of the former Russian empire, German Ambassador Mirbach indicated that a Polish lawyer Lednicki, resident in Moscow, had been designated to represent the Regency Council (ad interim government in Poland) and to represent the interests of the deported Poles. In a note addressed to Lednicki, Soviet Foreign Commissar Chicherin indicated that separation of Poland on the basis of the Peace Treaty with Germany was not an act of Polish self-determination, and that the Regency Council, established by the German government, was not a government representative of the Polish people. Consequently, discussions of the refugee problem with Lednicki, a person delegated by the German government, were to be considered only a technical arrangement to solve the problem of the repatriation of the Poles.³⁷

Following the defeat of Germany, and the renunciation of the Brest-Litovsk Treaty, the Soviet government arrested Lednicki and his mission, and replaced it with a committee of Polish refugees. In reply to the inquiries of the Polish Minister of Foreign Affairs, the Soviet government reiterated the position that it did not consider Lednicki to be the representative of Poland, and proposed an exchange of representatives with Julian Marchlewski, a Polish communist, representing the Soviet government.³⁸ However, when the Polish government declared that it continued to consider Lednicki as the representative of Poland and that his mission represented its interests, the committee was dropped and Lednicki and his mission were permitted to continue their activities.³⁹

A somewhat analogous situation developed during World War II when the Soviet Union broke off relations with the Polish government in exile in connection with the discovery of the graves of the Polish prisoners in the Katyn forest. A committee of the Polish Patriots Union assumed responsibility for representing the interests of Polish deportees from those provinces of Poland which were annexed to the Soviet Union pursuant to the Molotov-Ribbentrop Pact. In due course this committee assumed the duties of a full-fledged diplomatic mission, representing the interests of Poland.⁴⁰ The committee claimed to have established an underground movement in Poland, under the National Council, and on May 22, 1944, Stalin received its members as official representatives of Poland in his official capacity as head of the Soviet government.⁴¹

1. *Diplomatic Missions*

The first step of the Soviet government in organizing its foreign service was the decree of the Council of People's Commissars of the RSFSR of June 4, 1918.⁴² The old system of diplomatic rankings was abandoned and replaced by a new one based on the single rank of "Representative Plenipotentiary of the RSFSR." The decree declared that "in accordance with the fundamental idea of international law—as maintaining relations between equal states—all diplomatic agents of foreign countries accredited to the Russian Socialist Federated Soviet Republic (RSFSR) shall be considered endowed with equal representative capacity, irrespective of rank."

The decree was preceded by a short preamble which asserted that provisions of the decree were an expression of the "full equality of great and small nations," a principle to which the Russian Socialist Federated Republic adheres in its international relations. Indeed, in its early practice, the Soviet Commissariat for Foreign Affairs experimented with a uniform title for all diplomatic representatives of foreign countries.

In its literal meaning, the decree constituted a repeal of the Vienna Protocol of 1815, which established a diplomatic hierarchy according to which only diplomats with the rank of ambassador were given full representative capacity. The import of the decree was reduced by the fact that the provisions of the Vienna Protocol were already outdated, and the conduct of foreign policy increasingly had ceased to be based on royal prerogative. Its significance was rather limited to the Russian scene, where the provisions of the Vienna Protocol had retained their vitality, owing to the nature of the imperial regime.⁴³ For a long time, the Soviet government felt little need for systematic legislation on the organization of the Soviet foreign service. During the early years of the Soviet state, informal contacts with foreign governments was the only practical method of having international relation. The first act on this subject was the decree of May 26, 1921, issued by the Council of People's Commissars of the RSFSR called "The Statute of Soviet Organs Abroad."⁴⁴ It distinguished between temporary and permanent agencies of the Soviet government abroad, and listed among them diplomatic missions (representatives plenipotentiary), consuls and consulates, and trade delegations. This statute was supplemented by the decree of the Council of People's Commissars of January 22, 1922,⁴⁵ which regulated the appointment and subordination of Soviet missions abroad. Diplomatic missions were responsible for their activities to the People's Commissar for Foreign Affairs, representatives plenipotentiary were appointed and recalled by the All-Russian Central Executive Committee (VCIK), and only *chargés d'affaires* were under complete control of the People's Commissariat for Foreign Affairs. This legislation was further supplemented by the Statute of the People's Commissariat for Foreign Affairs, which dealt with the

entire organization of the foreign service, both at home and abroad. It described the organization, functions and responsibilities of the Commissariat, the relations between heads of the diplomatic missions and other missions in the same countries, and the appointment of mission heads and diplomatic officers with special responsibilities.

The Soviet foreign service faced a serious problem regarding the mode and purpose of diplomatic actions. Initially, the Soviet government made no distinction between diplomatic and political activity, which often involved contacts with revolutionary elements in various countries. The original corps of Soviet diplomats was recruited on the basis of political reliability and expertise in revolutionary and subversive action rather than knowledge of diplomatic *savoir faire*. Consequently, Soviet representatives were apt to compromise their government by actions hardly in keeping with the code of diplomatic conduct.

To eliminate some of the more drastic violations of accepted standards of diplomatic conduct, the Presidium of the Central Executive Committee of the USSR, on November 21, 1924, adopted the "Directives for the Representatives Plenipotentiary of the USSR Abroad." In the directives it was pointed out that, while recognition of the Soviet Union by a number of states represented an important achievement for the Soviet state, relations with those countries could present at the same time certain difficulties in view of the differences in economic structure between the Soviet Union and capitalist countries. To avoid embarrassment, the directives point out, missions were to be appointed for purposes which would rule out their participation in internal propaganda in receiving countries. At the same time, however, as Soviet missions represented a state of the working masses, the conduct of Soviet diplomats had to reflect the class character of the Soviet state. They had to avoid, for example, ostentation and participation in functions and ceremonies which were opposed to the social and political order of the Soviet state. The directives assured foreign diplomatic mission that the Soviet government would not consider it an act of discourtesy if foreign diplomats found it impossible to participate in similar activities in the Soviet Union.⁴⁶

The original program of austerity and simplicity, in accordance with the Spartan character of the workers' state, did not last long. In time the Soviet foreign service adopted all the paraphernalia and style of diplomatic conduct. A recently published manual,⁴⁷ devoted to various aspects of Soviet foreign diplomatic and consular service includes a detailed discussion of various social aspects of the duties of diplomatic and consular officials, including a code of etiquette as regards various types of receptions, methods of serving lunches, dinners, organizing cocktail parties, etc.

The Decree on the diplomatic ranks was a source of embarrassment at times. The Soviet government initiated its foreign policy with gestures of sympathy and special courtesies towards the oriental and ex-colonial peoples, and at the same time deprived itself of the opportunity of expres-

sing formally the intimate relationship which linked the revolutionary regime with those countries. Furthermore, the absence of diplomatic ranks was used by some governments to accord Soviet diplomats a status inferior to those accredited with traditional titles. In diplomatic lists, Soviet representatives were sometimes given a separate category, intermediate between that of a minister and a charge d'affaires. One Soviet diplomatic representative, arriving in Poland, insisted upon his right to present his credentials to the head of state during an official audience, which was denied him because it was claimed that his rank did not entitle him to the courtesy.⁴⁸ Similarly, there was the vital question of the equality of ranks of foreign diplomats accredited to Moscow.

In practice, therefore, the Soviet government recognized the necessity of departing from the principles of the 1918 decree, and initiated the practice of indicating in the credentials of Soviet diplomatic agents the rank which the government claimed for him.⁴⁹ Moreover, on special occasions, the Soviet government departed from the single-rank principle by means of special agreements with the countries concerned. Thus, in an exchange of notes of June 15, 1924, between the USSR and China, it was agreed that their representatives should be given the rank of ambassador. An official dispatch⁵⁰ announced: "Friendly relations between Afghanistan and the Union of Soviet Socialist Republics . . . had found further expression in a recently concluded agreement for the mutual elevation of their representatives — the Soviet representative in Kabul and the Afghan representative in Moscow — to the rank of ambassador." And in 1934, the Soviet Union and Poland elevated their missions to the rank of embassies.

During World War II, the Soviet government returned to the ranks of traditional diplomatic representation. The decree of the Presidium of the Supreme Soviet of the USSR of May 9, 1941,⁵¹ reestablished rankings for Soviet diplomats: ambassadors extraordinary and plenipotentiary, ministers extraordinary and plenipotentiary, and charges d'affaires. This decree was followed by another,⁵² which reformed the ranks of the foreign service in the Soviet Union, in the Ministry of Foreign Affairs, and in Soviet embassies and missions abroad. The revised foreign service included ambassadors (the highest service rank), ministers of the first and second class, councillors of two classes, first and second secretaries each of two classes, and third secretaries. At the bottom of the bureaucratic scale were attachés.

2. Trade Delegations

Nationalization of foreign trade forced the Soviet regime to devise a way to foreign trade relations by agencies of the government monopoly. This produced a *sui generis* duality in representation of Soviet interests abroad, and a system of governmental agencies in charge of foreign trade operations both at home and abroad. Abroad, the Soviet government developed a system of trade delegations which were subordinated to the Ministry of

Foreign Trade, and which were officially in charge of implementing foreign trade policies of the Soviet Union. At home, a separate system of government organizations representing import and export lines was established.

The present system of trade delegations abroad, and agencies in charge of foreign trade transactions at home, is the result of extensive experimentation. For a while, in order to obviate the distrust of foreign business circles and of foreign charitable organizations, the Soviet Union used organizations which pretended to represent social rather than state interests to establish trade relations and obtain economic assistance. One of these was *Tsentrosojuz* a cooperative venture whose name suggests that it serves the consumers market rather than the state. It operated in Britain, Italy and the Scandinavian countries.⁵³ Later, *Tsentrosojuz* was replaced by trade delegations, originally set up ad hoc, but which eventually were established as permanent organizations, frequently preceding full-fledged diplomatic representation. In 1920, such delegations existed in Estonia, Great Britain, Lithuania, and Latvia. In 1921, they were established in Italy, Austria, Turkey, Germany, Finland, Sweden, Persia, Czechoslovakia, Norway and China.⁵⁴

During this period, the activities and status of Soviet trade delegations were only partly subject to legal determination. They were an innovation in international relations, and as such could not function without permission of the receiving state. However, the first such agreements were made when the Soviet Union was not recognized *de iure*, and it was, therefore, inappropriate to consider their relation to the Soviet government. Four such agreements were concluded before formal recognition of the Soviet Union: with Germany of May 6, 1921, with Norway on November 5, 1921, with Austria on December 7, 1921, and with Denmark on June 15, 1923.⁵⁵ Following recognition, the status of trade delegations usually was determined in treaties of commerce and navigation, the first of which was the treaty with Italy of February 7, 1924. Article 3 of this treaty provided that the Italian government would grant the Soviet trade delegation the right to represent the interests of the Soviet Union and its citizens in foreign trade relations, to regulate trade in accordance with Soviet legislation, insofar as this was not contrary to the laws of Italy, to perform foreign trade transactions, and to promote the growth of trade relations. Trade delegations were to constitute an integral part of the diplomatic mission in Italy, and the members of the mission were to enjoy personal immunity, extritoriality of their offices, and all other privileges and immunities accorded to diplomatic missions. The Soviet Union assumed responsibility for contracts made by the trade delegation, and consequently, goods covered by these transactions were not to be subject to injunctions and execution.⁵⁶

More detailed provisions regarding the positions of the trade delegations and their responsibility for trade operations are to be found in the Soviet-German economic agreement of October 12, 1925. The status of the trade delegation in Germany was to be that of a diplomatic mission. At the same time, the Soviet Union recognized the competence of German courts to

apply German law as regards disputes concerning foreign trade transactions concluded in Germany, and the right of German creditors to seek satisfaction of their claims from the property of the Soviet Union in Germany, thereby rendering such property subject to execution and garnishment, with the exception of such objects as serving the rights of governmental sovereignty.⁵⁷

Although the wording of later treaties differed somewhat, the status of the trade delegation in Germany served as the model for all agreements with other countries. The substance of these agreements may be described as follows: the personnel of Soviet trade delegations are accorded the status of diplomatic officers, and the trade delegation the status of a diplomatic mission, either as part of the diplomatic representation or as a separate unit. In this capacity, the trade delegation enjoys all privileges and rights of a diplomatic mission.

As to its activity in foreign trade and in particular in connection with contracts for the sale or purchase of goods from foreign firms, the delegation is subject to the jurisdiction of the courts of the receiving state. The property of the Soviet state, commodities and sums of money, and claims against other firms or persons in the receiving country, are subject to execution for claims against Soviet trade delegations.

Regarding transactions concluded by the foreign trade delegation, these are considered private law transactions, and the fact that one of the parties is the Soviet state does not influence their character or legal significance. On several occasions, Soviet trade missions demanded that Soviet goods be exempt from customs duties, as a party to the transaction was the Soviet state. On another, the Soviet government claimed exemption from duties due on a shipment of grain delivered in Italy. However, the claims were rejected, and the general practice remained that Soviet commercial transactions were not covered by sovereign immunity.⁵⁸

At the same time, Soviet trade delegations are not responsible for trade transactions concluded by other Soviet economic organizations without their participation. Article 3 of the Annex to the Commerce and Navigation Treaty with Japan (1957) stated:

"It is understood that contracts entered into without the guarantee of the trade delegation by organizations which enjoy the status of independent juristic persons, create obligations only for those organizations, and execution of the basis of those contracts can be directed only against their property. Neither the government of the Soviet Union, nor the Trade Delegation, nor any other Soviet organization, with the exception of those which are parties to the contract, bear any responsibility as regards those contracts."⁵⁹

The extent of such concessions to the security of commerce varied from treaty to treaty. At times, the Soviet government has been able to depart from this pattern, e.g., the execution from assets belonging to the Soviet Union sometimes has been excluded where the Soviet Union guaranteed the payment of obligations assumed by Soviet trade delegations.

According to the Statute on Trade Delegations and Commercial Agencies of the Union of Soviet Socialist Republics of September 13, 1933,⁶⁰ trade delegations "represent the interests of the Soviet Union in the field of foreign trade and promote the development of trade and other economic relations between the Soviet Union and the country where they are accredited; regulate foreign trade of the Soviet Union with the country where the trade delegation is accredited; and handle foreign funds of the Soviet Union with the country where the trade delegation is accredited."

The act determined the status of the trade delegations as an integral part of the diplomatic mission in each given country, and at the same time ruled that it was subordinate to the Ministry of Foreign Trade. And yet, the legal regime of the trade delegation differs substantially from that of the foreign service of the Soviet Union, due to the fact that its status is subject to a separate international agreement with the receiving country. In effect, therefore, in view of its separate subordination, foreign service personnel employed in trade missions of the Soviet Union represent a separate branch of service and a separate network of diplomatic missions.

This separate legal status is also apparent from other circumstances. According to the Act of 1933 on Trade Delegations, the head of the trade delegation is the head of a separate agency. He is appointed (article 7) by the Council of Ministers, on the proposal of the Minister of Foreign Trade acting in agreement with the Minister of Foreign Affairs. His full powers are specified by the Council of Ministers. Foreign trade delegations may establish local offices in regions of special economic importance. In countries where there are no trade delegations, trade agencies may be established. Local offices and agencies are set up by decision of the Minister of Foreign Trade acting in agreement with the Minister of Foreign Affairs.

During the early period of their existence, trade delegations were the only channel for foreign trade transactions. A change of policy came with the law of September 13, 1933, on Trade Delegations and Trade Agencies. Since that time, trade operations have been entrusted to a Soviet economic organization with a separate legal personality and separate economic assets. In this new period, trade delegations have regulatory and supervisory functions.⁶¹

According to the 1923 Statute of the People's Commissariat for Foreign Affairs,⁶² the head of the diplomatic mission exercises full control over the activities of all institutions, enterprises and official persons representing the Soviet Union and the Union republics and their interests. His particular care is directed towards observing local legislation. All Soviet organizations are bound to report to the head of the diplomatic mission in a given country and abide by his instructions as regards political conditions, as well as those issued to avoid violating Soviet and local legislation. On request of the head of the diplomatic mission, other Soviet organizations may be obliged to submit materials and reports concerning their activities.

However, the head of a diplomatic mission is not authorized to direct

the work of special agencies. Should the head of a diplomatic mission disagree with the action of a specialized agency, deeming it to be contrary to the general policy of the Soviet Union, or in violation of the provisions of Soviet or local legislation, he may halt such activity. The matter is then submitted to the Ministry of Foreign Affairs, which decides the issue in consultation with the competent government agency. However, a protest from the head of a specialized agency does not halt the execution of the instructions of the head of the diplomatic mission.

C. Foreign Diplomatic Missions in the Soviet Union

1. General Survey

For some time following the Bolshevik Revolution the position of foreign diplomatic and consular missions was governed by events and the condition in the country rather than by the decrees of the Soviet government. Owing to the gradual attrition of diplomatic and consular personnel, functions of diplomatic missions were gradually assumed by the consulates, and when these in turn also disappeared, protection of foreign interests was frequently assumed by private, unofficial or international private organizations, such as the Red Cross, the Nansen mission, etc.

On June 30, 1921, the Council of the People's Commissars adopted the Statute of the Diplomatic Representatives Accredited to the Workers and Peasants Government of the RSFSR⁶³ which dealt with recall and accreditation procedures of foreign representatives; the status, rights and privileges of diplomatic personnel; the right of the missions to communicate with their governments; and the right of the flag. According to article 5, the People's Commissariat for Foreign Affairs was authorized to grant diplomatic status to foreign agents who formally were not members of the diplomatic corps.

The 1921 decree was replaced by the Statute of Foreign Diplomatic and Consular Agencies in the USSR, adopted in 1927 by the joint decree of the Central Executive Committee and the Council of People's Commissars.⁶⁴ The central idea of this statute was reciprocity of treatment. Foreign missions and their personnel were granted the status provided by Soviet law provided that Soviet missions and their personnel in the sending country were granted a similar status. Diplomatic privileges were granted after a letter of accreditation had been found to be appropriate form and in proper order.

A foreign diplomat was a person accredited by a foreign country as such, either with the Central Executive Committee of the USSR (since the Constitution of 1936), Presidium of the Supreme Soviet of the USSR, or with the People's Commissariat (Ministry) for Foreign Affairs. The law also dealt with diplomatic couriers and the diplomatic pouch. Diplomatic personnel were exempt from local taxes, and the statute provided that

customs exemptions of personal belongings and baggage brought in by diplomatic personnel and of parcels and objects mailed to them were subject to special regulations.

The decree of the Presidium of the Supreme Soviet of March 27, 1956, provided that privileges, rights and exemptions according to diplomatic personnel would apply to technical and service personnel of the foreign mission, on the basis of reciprocity, excluding, however, Soviet citizens employed by a foreign mission.⁶⁵

The Statute of 1927 was replaced by the Statute on "Diplomatic and Consular Missions of Foreign States on the Territory of the USSR" of May 23, 1966.⁶⁶ The basic rule of the statute is that foreign missions and their personnel are accorded privileges and immunities in order to enable foreign missions to perform their duties according to the rules of international law. The statute applies equally to missions to the Soviet Union and those accredited with governments of the Union republics.

The scope of privileges and immunities granted to foreign missions may be broadened by international agreements with individual countries. The statute determines the position and the rights of service and technical personnel, as well as the status of other representatives of foreign countries and members of parliamentary and governmental delegations, and finally of diplomats and other persons covered by the statute travelling through the territory of the Soviet Union.

Soviet treaty practice seems to indicate that only in exceptional cases has the Soviet government considered it necessary to describe the position of foreign missions in the Soviet Union and of Soviet missions abroad in terms of actual rights and privileges which should aid in the discharge of their duties. Soviet legislation also seems to indicate that, on one hand, Soviet practice relies on well-established international law concepts regarding the extent of diplomatic rights and immunities applicable to Soviet diplomats abroad, and the extent of rights and immunities granted to foreign diplomats in the Soviet Union are based upon concepts of reciprocity and equality. In early treaties with some oriental countries, Afghanistan (Treaty of February 28, 1921),⁶⁷ Persia (February 26, 1921),⁶⁸ and China (May 31, 1924),⁶⁹ diplomatic agents were to enjoy "... the rights of extraterritoriality and other prerogatives in conformity with international law and custom, or with the norms as they exist in respect of diplomatic agents in both countries."

Similar treaties with Western neighbors, however, omit references to the rights and immunities of mutually exchanged diplomatic agents while performing their function on the territory of the other country. Treaties with Poland, Lithuania, Estonia, and Latvia simply stated that immediately after the ratification of the treaties diplomatic and consular relations would be established.

The issue of privileges and immunities has been raised only in treaties dealing with the functions of agents which did not clearly fall into the

existing categories of diplomatic agents and missions. So, for instance, in the frontier protocol with Poland,⁷⁰ members of the conciliation commissions were guaranteed personal inviolability together with their luggage, the weight of which was not to exceed 50 kilograms. In the Soviet-Danish preliminary trade agreement of April 23, 1923,⁷¹ members of the trade delegations, provided they were nationals of the sending country, enjoyed the right of free access to the minister of foreign affairs of the country of their accreditation, the right of free communication with their government by mail, telephone, telegraph and radio, and the right to use cipher, couriers and the diplomatic pouch. They also enjoyed personal immunity from jurisdiction and freedom from taxes; and their offices and living quarters also were inviolable. They enjoyed other immunities which usually were accorded to diplomatic representatives of other countries, and their suites were given similar exemptions and immunities according to the rules of international law. The official representative of the RSFSR was to be considered as the only representative of the Russian republic, and agents of both parties were to have the right to display the flag and the coat-of-arms of their countries.

The rights of the trade agents in Japan were described in the Soviet announcement of April 29, 1923,⁷² with reference to the position of consuls of third states. In the trade agreement with Great Britain, however, the position of trade agents was again described with reference to diplomatic status, with some limitation as regards the importing of objects for personal use.⁷³

2. The Statute on Foreign Diplomatic and Consular Missions of 1966

Although the principal object of the 1966 Statute is to regulate foreign missions in the Soviet Union, it also states the Soviet government's counter-claims to minimum status acceptable to the Soviet government for Soviet missions in other countries. It offers to grant broader immunities and privileges on a reciprocal basis, and to enter into separate agreements for mutually extending immunities and privileges.

Minimum standards, exemptions, and immunities are prescribed because foreign diplomatic missions are indispensable to discharge their functions, and members of the international community are bound to grant each other such minimal standards unless agreements between them provide otherwise. Article 1 of the Statute provided: "On the territory of the USSR, diplomatic missions (embassies or legations) and consular missions (consulates general, consulates, vice-consulates, or consular agencies), as organs of foreign states, are accorded privileges and immunities described in the present Statute, in order to enable them to perform their functions defined in accordance with the norms of international law."

"Privileges and immunities are also accorded to the personnel of these missions as determined by the articles which follow."

The statute also distinguishes between missions as such, and personnel

which constitute a mission. Certain rights and privileges were reserved for missions as institutions and others for their personnel, although at times it is difficult to distinguish between diplomatic mission and diplomatic agent, especially if the head of the mission is involved. This latter is demonstrated by the fact that the right to display the flag of the country and its coat-of-arms applies both to the mission and to the residence of its head.

The first category of persons granted full diplomatic status (i.e., rights, immunities, and exemptions) includes the head of the mission and the diplomatic personnel, including councillors, trade delegates and their substitutes, military, naval and air attachés and their deputies, first, second and third secretaries, attachés, and archivists of the mission.

The families of the head of the mission and its diplomatic personnel belong to the same category, provided they live in common household and are not Soviet citizens (articles 15, 16, and 17).

Also in this category are diplomats of foreign countries, and their families, accredited in a third state and travelling through the USSR in order to reach the country of their mission (article 18). In this case, the scope of their immunities and exemptions is limited by the limited purpose of the presence on Soviet territory.

Privileges and immunities prescribed for diplomatic personnel also apply to representatives of foreign states, such as heads of states, heads of government, ministers of foreign affairs, etc., members of the parliamentary and governmental delegations and assistants of such delegations from foreign countries participating in conferences in the USSR, or arriving in the Soviet Union for the purpose of negotiations, meetings of international bodies and similar official duties. These persons also enjoy similar privileges when travelling through the Soviet territory, to the extent that it is indispensable for their safe passage. The same applies to their families, provided they are not Soviet nationals.

In addition to diplomatic personnel, the Statute of 1966 lists administrative-technical personnel, service personnel, and domestic service employed by the members of the diplomatic staff.

3. Basic Principles

The 1966 Statute accepted the rule that certain rights and privileges are due to diplomats on the basis of international law, and therefore would be granted to foreign diplomats automatically. Reciprocity was reduced to a subsidiary role in determining the scope of privileges and exemptions in marginal areas.

Another feature of the 1966 Statute is that it abandoned the use of the concept of extraterritoriality and replaced it with the principle of proportionality. Exemptions and immunities, as well as rights serving the mission as a whole, are designed to permit the mission to perform its functions. Extraterritoriality was the basis of some early Soviet treaties dealing with

recognition and exchange of diplomatic missions. Rights and immunities aiding performance of functions are consistent with the rules of international law, and do not involve the violation of the domestic laws of the Soviet Union. Article 2 of the statute provided: "All persons who avail themselves of the privileges and immunities provided for in this Statute are obligated to observe the law, regulations and rules in force in the Soviet Union and Union republics."

4. Diplomats Accredited in Third Countries

Soviet law and diplomatic practice may affect diplomats of other countries accredited in third states when such diplomats travel in the Soviet Union, and during Soviet occupation of certain areas in Eastern and Central Europe.

Foreign diplomats travelling to their posts in third countries are accorded those immunities and exemptions necessary to accomplish their mission. Article 18 of the 1966 Statute provided:

"The head of a diplomatic mission and diplomatic personnel of a foreign state accredited in a third country, travelling in transit through Soviet territory, enjoy personal inviolability and other immunities, which are necessary to safeguard their transit. This also applies to the members of their families, enjoying diplomatic privileges and immunities while in the company of the above-mentioned persons, or who travel separately, to join them or to return to their country.

"Diplomatic couriers who travel through the territory of the USSR enjoy the same inviolability and protection, which are granted to diplomatic couriers travelling in the USSR."

In case of belligerent occupation of territories of foreign countries by the Soviet armed forces it is necessary to distinguish annexation from military occupation.

Following the occupation of Riga during military operations against the Latvian Republic in January 1918, the Soviet government of Latvia informed the German government⁷⁴ that members of the German mission to the former government of Latvia would be treated as private persons, and that the Soviet government would not respect German property found in Latvia. At the same time however, the Soviet government of Latvia offered to negotiate a mutual exchange of diplomatic missions with the German Republic.

Following the annexation of parts of Poland, Rumania and of the three Baltic Republics in 1939 and 1940, the Soviet Union closed consulates and diplomatic missions in the new provinces that had been added to the Soviet territory.

The situation was different when the Soviet Union, as an ally of the Western Powers, became an occupying power in Rumania, Hungary, Austria, and Bulgaria. In these countries, the Soviet government did not interfere with diplomatic missions of neutral nations.

5. The Beginning and End of the Mission (Break of Diplomatic Relations)

Diplomatic status, and rights and immunities attaching to it, are accorded to a member of a mission under condition that the given person has been appointed to a post in the mission and accepted by the Soviet government. Appointment of the head of a mission, an ambassador, minister and chargé d'affaires calls for the prior agreement of the Soviet government, and requires an official accreditation with the competent authority (Presidium of the Supreme Soviet as regards accreditation of ambassadors and ministers, and the Ministry of Foreign Affairs as regards the accreditation of the chargé d'affaires). Appointment of the military, naval and air attachés calls for an agreement with the Soviet government. Appointment of other diplomatic officers does not call for prior agreement. However, as entering the Soviet Union is contingent upon receipt of an entry visa, even the appointment of the last category of officials is subject to informal agreement of the Soviet authorities.

According to article 31 of the Statute, the Ministry of Foreign Affairs of the Soviet Union issues proper identification cards to persons entitled to diplomatic privileges, with the exception of persons listed in article 9 (diplomatic couriers); article 18 (heads of missions and diplomatic personnel of a foreign state, accredited in a third state, or travelling though the territory of the Soviet Union as well as members of their families); and article 29 (delegations representing parliaments or governments or a foreign state coming to the Soviet Union for negotiations, or to participate in international conferences, meetings or other official functions). In other words, documents are issued to personnel permanently posted in the Soviet Union.

Diplomatic status is accorded to a diplomatic officer of a mission for the duration of his functions, which may be terminated because of rupture of diplomatic relations, or because of recall of the diplomat from the post in the Soviet-Union.

A state of war between the Soviet Union and another country is followed by the break in diplomatic relations with that country. The same effect follows the occupation and the liquidation of the independence of a country by the Soviet Union, or successful occupation and liquidation of independence by another state. The Soviet Union broke off diplomatic relations with Finland following the Soviet attack upon Finland in 1939. It also broke off relations with Lithuania, Estonia and Latvia following their military occupation and incorporation into the Soviet Union. The Soviet Union broke off diplomatic relations with Poland on the day the Red Army crossed into Poland to occupy those provinces which were to be the Soviet share, according to the secret plan for the partition of Poland in the Ribbentrop-Molotov Pact (August 23, 1939). The Soviet Union broke off relations with all those countries which fell victim to German aggression and were effectively occupied by the German armies: Czechoslovakia, Norway, Belgium, Denmark, and Greece. Following the German attack upon the Soviet Union

this policy was reversed, and the Soviet Union reestablished diplomatic relations with Czechoslovakia, Poland, Greece, Norway, and Belgium.

The rupture of diplomatic relations is quite frequently used by the Soviet government as a means of political pressure, or as a demonstration that under certain conditions relations between the Soviet Union and another country had reached the point where maintaining diplomatic relations would be against Soviet interests. A typical example is the breaking of relations with Poland after the discovery in 1943 of the graves of Polish officers in Katyn, and the request of the Polish government-in-exile addressed to the Swiss Red Cross to investigate the matter.

Another example is of the Soviet Union's diplomatic relations with Israel. The Soviet Union was the first to recognize Israel's independence and to establish diplomatic relations with that country. During the following years it twice came to the conclusion that maintaining diplomatic relations with Israel was contrary to its interests. These breaks came about primarily because Soviet foreign policy became favorably oriented towards the Arab world. Breach of diplomatic relations was the immediate reaction to the explosion of a bomb in February 1953 in the premises of the USSR Legation in Tel Aviv. Despite official apologies, the Soviet government accused Israel of connivance in this outrage, terminated diplomatic relations, and ordered the Israeli mission to leave Moscow.⁷⁵ In May of the same year the Soviet government reestablished relations with Israel, accepted the apologies of the Israeli government, acknowledged the fact that the Israeli government was continuing its efforts to bring the perpetrators of the bombing to justice, and quietly dropped its charge of complicity of the Israeli government in the incident. The rupture occurred when the Soviet Union was experiencing a wave of anti-Semitic persecutions. On Stalin's instigation a number of prominent Jewish doctors were charged with the murder of leading Soviet politicians, and public trial was being prepared. Stalin's death stopped these machinations. The doctors were released and rehabilitated, and the rupture with Israel was healed.⁷⁶

In June 1967 the Soviet Union broke off relations with Israel to demonstrate support for the Arab states at the time of the June war between Israel and the Arab states.⁷⁷

In 1952 the Soviet government broke off relations with the government of Fulgencio Batista over the refusal of Cuba to permit the entry of Soviet couriers who had brought a diplomatic pouch for the Soviet Embassy.⁷⁸

On December 15, 1964, the Soviet government broke off relations with the Congo government after Moise Tshombe seized power. The Soviet government charged the diplomatic representative of the Congo with unfriendly actions toward the Soviet Union, without specifying the charges.⁷⁹

6. *Persona Non Grata*

The 1966 Statute provides that immunities and exemptions are granted in order to permit diplomatic missions to perform their functions. One of the conditions of the regime of the foreign missions in the Soviet Union is the obligation of all persons enjoying exemptions, privileges and immunities to respect "laws, regulations and rules in force" in the USSR and the Union republics. This reservation is repeated in regulations dealing with individual rights and immunities (article 7, last para.; article 9, para. 3; article 11, para. 3). Violation of these restrictive provisions may reflect upon the persons of the diplomats involved, and may create a situation which will jeopardize their usefulness in the Soviet Union.

Although, according to the Statute of 1966, only certain categories of persons require previous acceptance by the Soviet government, in fact the Soviet Union has made use of the right to refuse admission to individuals appointed to foreign missions and found unacceptable by the Soviet government. In the memorandum delivered to the British Embassy in Moscow in May 1949, the Soviet Ministry of Foreign Affairs asserted:

"As regards the question raised in the Embassy's memorandum about the Ministry of Foreign Affairs not being within its rights in refusing to issue visas for entry into the USSR to persons seeking to enter the Soviet Union for diplomatic service, such a point of view does not find confirmation either in diplomatic practice or in the standards of international law, which envisages a position whereby a visa can be refused to one or another person as *persona non grata*."⁸⁰

The official justification for the refusal of a visa, or of a request to remove a person declared *non grata*, is that a given person behaved "disloyally" towards the Soviet Union. The most frequent form of that justification is the charge of espionage activities. One of the first incidents of this sort was the case of four Turkish diplomats in the spring of 1922, at a time when the Soviet Union maintained very friendly relations with Turkey. The Turkish diplomats were arrested and expelled from the Soviet Union. On this occasion Foreign Commissar Cziczerin expressed the opinion which still is the backbone of the Soviet attitude toward foreign diplomats, and one of the principles of the Statute of 1966. "International law," Cziczerin asserted, "does not guarantee the inviolability of diplomatic documents and the immunity of the diplomatic personnel in order to permit the latter to engage in espionage. If, in spite of this, diplomatic personnel abuse the trust which they enjoy and engage in spying activities, they lose the right to respect and consideration on the part of the government of the accrediting state, and it is permissible to apply to them, in order to protect its security, appropriate measures to deal with the transgression according to circumstances."⁸¹

Current Soviet practice is to declare a diplomat *persona non grata*, usually following a particular incident which in the opinion of the Soviet government indicates activities incompatible with diplomatic status. Most frequent

are charges of espionage, although at times a diplomat is declared *persona non grata* in spite of the fact that no such compromising incident occurred. One of the earlier cases of this type was the removal of a Yugoslav chargé d'affaires in November 1949. In that case the Soviet government asserted that "The Ministry possesses reliable information testifying to the fact that the Chargé d'Affaires of the Yugoslav Embassy . . . is abusing his official position by engaging in espionage and subversive activity against the Soviet Union . . ." The statement made it clear, however, that the demand for the removal of the Yugoslav diplomat was in retaliation for the removal of three Soviet diplomats and Soviet employees in Yugoslavia, at the time of highest tension in relations between the two countries.⁸²

A recent action against foreign diplomats involved an American air attaché who was charged with making numerous "intelligence trips to various areas of the Soviet Union during which he tried to penetrate important military installations." Among other things, the Soviet memorandum asserted, the American attaché photographed naval installations in Odessa and was detained by a military patrol. During those trips he used a special "intelligence camera." His assistant, travelling with him, took pictures from the train and made notes in his notebook. The military attaché was declared *persona non grata* and expelled, while his assistant was warned that his activity was incompatible with his diplomatic status.⁸³

In October 1960, the British Embassy protested against the detention and interrogation by the Odessa police of two British diplomats, a second a third secretary of the British Embassy in Moscow, who took pictures of a crowd of buyers in an Odessa store. The Soviet government's explanation was that the pictures were taken without the consent of the persons involved, and that the British diplomats continued their activities in spite of the fact that they were warned not to do so.⁸⁴

Another example was the combined case of the American and British diplomats who travelled together in the Soviet Union. On December 4, 1964, the U.S. Embassy in Moscow received a note from the Soviet Ministry of Foreign Affairs, which declared a U.S. army attache and a U.S. assistant air attache to be *persona non gratae*. An identical note was delivered to the British Embassy declaring a British assistant naval attache as *persona non grata*. The notes stated: "The Ministry expects the Embassy to take due measures for the prevention of such illegal activity in the future, and for the strict observance by all staff members of the Embassy of the norms and rules of conduct for accredited diplomatic representatives."⁸⁵

The Soviet note was delivered in connection with the protests of the American and British Embassies against the arrest and detention of the three diplomats while travelling on the train from Moscow to Vladivostok, and confiscation of notes and other materials on their persons or in their possession. The Soviet note of October 6, 1964, in reply to the protest, alleged that the three diplomats, while travelling on the train, gathered information looking through the windows of the train and committed acts of espionage.

In the words of the Soviet note:

"Evidence for this includes more than 900 pictures they had taken on numbered film, notes on intelligence assignments and the results of their completion contained in 26 notebooks, and also the fact of the use of special optical apparatus and other technical intelligence devices. These materials indicate that the above-mentioned persons collected intelligence data on railway junctions, bridges, tunnels, radar installations, airports, locations on troop units, and other objects of defense significance."⁸⁶

In connection with the espionage trial of G. Brooke, on July 28, 1965, the Soviet Ministry of Foreign Affairs expelled a second secretary of the British Embassy.⁸⁷

Another recent case where an American diplomat was declared *persona non grata* was the case of American cultural attache in Moscow who was expelled for activity incompatible with the status of an accredited diplomatic agent. The Soviet government took exception to the fact that the cultural attache maintained contacts with African students who had come to study in the Soviet Union.⁸⁸

The practice of declaring foreign diplomats *personae non gratae* by Soviet government follows a certain pattern. It reflects strained relations between the Soviet Union and those states, which at a certain point in time have been targets of Soviet pressure. Sometimes charges of espionage or hostile conduct are made to underscore foreign or domestic policies. Typical in this respect was the treatment of Israeli diplomats, who were expelled at a time when Soviet internal policy was going through one of its anti-Semitic and xenophobic periods. Israeli diplomats were also victims of the Soviet policy of Arab rapprochement. Expulsion of diplomats was comparatively rare prior to 1948. Following the Berlin and Korean crises, the Soviet government, and particularly the Soviet Ministry of Foreign Affairs, sought to make the work of foreign diplomats in Moscow difficult.

Frequently, foreign diplomats were expelled to cover up espionage organized by Soviet diplomats in foreign countries where the Soviet Union had vital security interests (Denmark, Sweden, Turkey), or sought to obtain economic advantages (Iran). In the comparatively short period from 1948 to the present, diplomats of some twenty states have been affected by Soviet dissatisfaction with the policy of their governments. Even diplomats of other socialist countries have not been spared (Albania, Yugoslavia and China). The removal of socialist diplomats was the result of ideological differences and refusal to accept Soviet leadership, or of the indiscretions of Soviet diplomats, who at times interfered in internal affairs of those socialist countries. Diplomats of Latin American countries were expelled in retaliation for demands for the recall of Soviet diplomats who became involved in revolutions or labor unrest in their countries.

Soviet demands for recall usually met with similar demands from the affected governments, and at times Soviet diplomatic relations changed into a game of retaliation, thereby contributing to the coldwar psychosis.

7. Rights of the Diplomatic Mission

In the complex of rights, privileges, immunities and exemptions serving the Moscow diplomatic establishment, certain rights pertain to diplomatic missions as a whole. They are exercised by the head of the mission, or by subordinate members of the staff, but are not connected with their persons.

The Statute of Diplomatic Missions of 1927⁸⁹ gave foreign missions the right to communicate with their own governments or with diplomatic missions of their countries in third countries, by means of open and coded messages, through regular diplomatic mail, as well as the right of unhindered communication with their own consulates in the Soviet Union by means of mail, or open or coded telegraphed messages.

These somewhat laconic provisions were greatly expanded in the 1966 Statute. Article 9 of the statute stated that a diplomatic mission has the right to communicate with its government, with diplomatic missions of its country in third states, with consular missions of its country, by regular communication, coded telegrams and also by diplomatic mail. Archives, documents and official correspondence of diplomatic mission are inviolable. Diplomatic mail cannot be opened or detained. Containers for diplomatic mail must be properly marked, and may contain diplomatic documents and objects for official use only.

Transmission of diplomatic mail across the Soviet frontier is regulated by the Ministry of Foreign Affairs, acting in agreement with the Ministry of Internal Affairs. According to the Statute of 1966, the chief method of transmitting diplomatic mail is through diplomatic couriers, who may either be normal diplomatic couriers, or couriers *ad hoc*. Couriers enjoy, while on duty, personal immunity and are free from arrest and detention. When so agreed by the governments concerned, diplomatic mail may be carried by the regular postal services, or may be entrusted to the captain of a civil airship. The airship's captain, however, is not considered a diplomatic courier. A diplomatic mission in the Soviet Union may arrange for direct transmission of a package of diplomatic mail to its representative by the captain of the ship.

Admission of diplomatic mail into the Soviet Union is regulated by the Ministry of Foreign Trade acting in agreement with the Ministry for Foreign Affairs and with the Ministry of Finance. All agencies of the Union government and of the Union republics are obliged to assist diplomatic couriers to assure uninterrupted delivery of the diplomatic mail to its destination.

Missions may establish and use radio stations only when permitted by the competent organs of the USSR.

The current Soviet position regarding the use of the diplomatic pouch for Soviet government activity abroad results from conflicting interests. On one hand, the Soviet Union as a state with global interests depends on confidential communication between its missions and the government at home. On the other hand, it is also interested in limiting the use of the diplomatic pouch by foreign missions, as practical experience has taught the Soviet government

that it can be used to the detriment of the accrediting state.

In the early period of Soviet-German relations, the Soviet government tried to prevent abuse of the diplomatic pouch by German diplomats, by suggesting weight restrictions on diplomatic correspondence and by limiting the frequency of travels of diplomatic couriers.⁹⁰ At the same time the Soviet government was using its pouch for transmission to Germany of subversive materials provoking the search of the pouch and subsequent rupture of diplomatic relations.⁹¹

During the succeeding period of negotiations for recognition and some form of official relations with other countries, the Soviet government unsuccessfully sought the consent of foreign governments to grant Soviet trade delegations, and economic negotiators generally, the right of the diplomatic pouch, or direct communication with the Soviet government and of the use of cipher. The first important breakthrough in this respect was the Russo-Japanese agreement of 1923 on the exchange of representatives between the two countries.⁹² The problem was solved when the Soviet Union widened the circle of states recognizing it *de iure* and established formal diplomatic relations, with trade delegations a part of the diplomatic mission in each country.

Among other rights of the mission is the right to display the flag and coat-of-arms on the building and on the residence of the head of the mission and of the means of transport used by the head of the mission. Premises of the mission are inviolable and exempt from Soviet jurisdiction.⁹³

8. *Jurisdictional Immunities of Diplomatic Personnel*

Jurisdictional immunities are granted to the mission, its staff and their families, persons with diplomatic status, and their families, who are temporarily but officially present on Soviet territory, and to diplomats posted to missions in third countries while travelling through Soviet territory.

Personal immunity and freedom from arrest and detention extend to all persons with diplomatic status, their families, and to diplomatic couriers. Offices of the mission, the residence of the head of the mission, lodgings of members of the diplomatic staff, and those of persons living with these persons in a common household, and means of transport are free from search, execution and seizure. Access to the offices of the mission, the residence of the head of the mission, and of the diplomatic members of the mission is prohibited unless authorized by the head of the mission, or the occupant of the lodging. Privileges and immunities do not extend to members of the families who are Soviet citizens (article 7).

As regards persons who enjoy diplomatic status while traveling through the Soviet Union, or are temporarily present on Soviet territory, immunities described above apply only in so far as they are essential for the purposes of their presence in Soviet territory. Presumably, their hotel rooms would be treated as lodgings of diplomats and their families.

Persons with diplomatic status are exempt from criminal, civil and administrative jurisdiction of the USSR and of the Union republics (article 13).

Exemption from administrative jurisdiction, as it may apply to a foreign diplomat, includes minor transgressions of public order, traffic and parking regulations. But diplomats and their families are subject to criminal prosecution under conditions of a clearly expressed agreement with the foreign state. According to article 4 of the Principles of Criminal Legislation of 1958, which replaced the earlier criminal legislation of the USSR:

"All persons who commit crimes on the territory of the USSR shall be subject to responsibility in accordance with the present code.

"In the event that crimes are committed on the territory of the USSR by diplomatic representatives of foreign states and other citizens who, in accordance with laws in force and international agreements, are not subject to criminal jurisdiction in Soviet judicial institutions, the question of their criminal responsibility shall be decided by diplomatic means."

The correct interpretation of this somewhat unclear provision seems to be that Soviet courts have no jurisdiction over persons who have diplomatic status or are otherwise exempt from their jurisdiction. They can take no action against such persons unless instructed to do so by the competent organ, i.e., Ministry of Foreign Affairs. "Judicial institutions" would also cover the Procuratura (public prosecution) and investigatory agencies in general. It seems that it is not the responsibility of Soviet courts to secure the agreement of the foreign state to allow prosecution of persons covered by diplomatic status.

Provisions of the Criminal Procedure statute state clearly that the intervention of the Ministry of Foreign Affairs is necessary in all matter connected with the administration of justice when diplomats are involved. According to article 33, paragraph 2, of the Code of Criminal Procedure of the RSFSR (which may be taken as representing the general position of the Soviet law in the matter):

"With respect to persons possessing the right of diplomatic immunity, procedural actions provided for by the present Code shall be carried out only upon their request or with their consent. Consent for carrying out such actions shall be obtained through the Ministry of Foreign Affairs."

The same applies more specifically to searches and seizures on premises of diplomatic missions and the dwellings of the diplomats and their families. Article 173 of the Code of Criminal Procedure states:

"Seizure and search may be conducted on premises occupied by the diplomatic missions, or on premises in which members of diplomatic missions live, only upon the request or with the consent of the diplomatic representative. The consent of the diplomatic representative to seizure or search shall be obtained through the Ministry of Foreign Affairs.

"The presence of a procurator and of a representative of the Ministry of Foreign Affairs shall be obligatory in the conduct of a seizure or search on the said premises."

Members of the diplomat's family are included in the immunity from the searches and seizures upon condition that they live in the same household. Should such a member establish a separate household he is no longer covered by the immunity. It also seems that the same applies generally regarding jurisdictional immunity. Article 15, at least, seems to make the common household a condition of all immunities extended to members of the family.

Immunity from civil jurisdiction is less absolute. It extends to all matters connected with their official activity. However, it does not extend to situations in which the head of the diplomatic mission or members of the diplomatic staff of the mission are parties to civil law relations as private persons in connection with claims concerning structures in the USSR, inheritance, or other activity undertaken outside their official functions.

The principle of diplomatic immunity in civil jurisdiction is stated in article 13 of the Principles of Civil Procedure (article 61 of the Civil Procedure of the RSFSR):

"The accredited diplomatic representatives of foreign states in the USSR and other persons indicated in the corresponding laws and international agreements are subject to the jurisdiction of Soviet courts in civil cases within the limits laid down by the rules of international law or by the conventions with respective states."

It seems, for instance, that a member of a diplomatic mission who marries a Soviet citizen could be sued in Soviet courts in matters concerning family relations, as these courts would always be competent in matters of the personal status of a Soviet citizen. The RSFSR Code on Marriage, Family and Guardianship of November 19, 1926, which is still in force, states that marriages between aliens and Soviet citizens are governed by Soviet law. There is no exception for marriages of Soviet citizens abroad. Consequently, even if a foreign diplomat should marry a Soviet citizen abroad, Soviet courts would still have jurisdiction, and Soviet law would be applicable to all relations resulting from such a marriage.

According to article 13 of the 1966 Statute, immunity from civil jurisdiction is absolute. It does not depend upon reciprocal treatment of Soviet diplomats in the sending country. However, the RSFSR Code of Civil Procedure makes it clearly an immunity based on reciprocity. Article 435 states:

"Diplomatic representatives of foreign countries accredited in the USSR and other persons, specified in the legislation in force and in international agreements, are subject to the jurisdiction of the Soviet court only within the limits determined by the rules of international law or by agreements with the states concerned.

"In accordance with article 61 of the Principles of the Civil Procedure of the USSR and of the Union republics in instances where the Soviet state or its property or representatives of the Soviet state are not accorded in a foreign state an identical jurisdictional immunity, which on the basis of the

present article is accorded to foreign states, their property or the representatives of foreign states in the USSR, the Council of Ministers of the USSR or other competent organs may adopt retaliatory measures as regards this state, its property or the representative of this state."

Finally, the head of a mission, or its diplomatic personnel, are not obligated to testify in courts and cannot be forced to do so. Should they agree, however, to provide evidence in a case before a Soviet court, they are not obliged to make depositions in court or in the offices of the investigatory agencies. The law is silent as to where the testimony of a foreign diplomat may be obtained, but it seems that the place and time must be agreed to with the diplomat concerned. He may certainly testify in his office or at his home.

9. Jurisdictional Immunity of Non-Diplomatic Personnel

Jurisdictional immunities are extended to technical, administrative, and service personnel of a diplomatic mission, not as a matter of rights guaranteed by international law, but on the basis of reciprocity, implying either an express agreement between the Soviet Union and the state concerned, or a constant practice with the other state. Technical and administrative personnel enjoy immunity regarding the status of their dwellings and regarding criminal jurisdiction the same as diplomatic personnel. However, their immunity from civil and administrative jurisdiction is limited to matters connected with their official duties.

The privileges of technical, administrative or service personnel of a mission apply only upon condition that such persons are not Soviet citizens, foreigners or residents of the Soviet Union who are employed by a diplomatic mission as such. Resident foreigners have the status of natives, and are governed by principles of the national regime.⁹⁴

10. Exemptions from Taxes, Customs Duties and Import Restrictions

Immunities from public financial charges, including national and local taxes, excise, customs duties and import restrictions are scaled according to the status of the person or institution concerned.

The mission itself is free from all national and local taxes and all public duties and fees, except of charges and payments for services and public utilities (electric power, water, gas, telephone, etc.). The same applies to the head and the diplomatic personnel of a mission, as well as the diplomatic staff.

A mission and its diplomatic personnel are free from restrictions on the import of objects and goods for the official use of the mission or the personal use of the diplomatic staff. Such objects and goods, including basic furniture and equipment, are free from customs duties. The personal luggage of the head of the mission and of the diplomatic personnel is free from customs inspection, unless there are serious grounds to assume that it contains ob-

jects which may not be exported or imported, or are under a special regulation as regards their admission to the Soviet territory or their removal abroad. Here restrictions regarding the export or import of art objects are of singular importance.

The system for handling the luggage of diplomatic personnel, import of objects for their use, and regulations regarding exemptions from customs duties is determined by the Ministry of Foreign Trade, acting in agreement with the Ministry of Foreign Affairs and the Ministry of Finance.

Administrative and technical personnel are exempt from national and local taxes and from personal services. They have no import privileges, their luggage is subject to inspection, and their imports are controlled by the general provisions and are subject to customs duties according to these provisions. The only exception here is the regulation that basic furniture and household equipment is free from import duties.

Service personnel of the diplomatic mission are free from national and local taxes on their pay and wages for work in the mission, and are free from all personal service duties.

Domestic servants who work for mission employees are free from taxes on wages.

11. *Jurisdictional Immunities of the Soviet Trade Delegations*

The status of Soviet trade delegations is the subject of special provisions of trade and navigation treaties. The main problem here is that trade delegations conduct foreign commerce in the country of their accreditation. The general tendency in international law has been to deny the privilege of sovereign immunity to commercial transactions in which a state is a party. Court practice of a number of states (although there is no unanimity in this respect) recognizes that transactions of this type are subject to the jurisdiction of local courts and are under the rule of the local law according to the general rules of private international law.⁹⁵

The position of the Soviet Foreign Trade Delegation is the result of two principles which constitute the core of Soviet agreements with other countries. First, the Soviet Union assumes responsibility for all foreign trade transactions made by its delegations. Second, the Soviet trade delegation is an inherent part of the Soviet diplomatic mission in the country of its accreditation.

Early treaties which the Soviet Union made with other countries (Italy, 1924; Norway, 1925; Sweden, 1927; Lithuania, 1931), stipulate that the Soviet Union accepts responsibility for all transactions concluded in a given country. Later, this responsibility was restricted to situations in which a transaction was concluded by the trade delegation as such, and not by any other Soviet juristic person with a separate legal personality. This was due to a change in policy, and the substitution of foreign trade organizations (trade associations) for the trade delegation. These organizations took over

direct dealings with traders in other countries.⁹⁶ This practice was maintained after World War II.

Since the Soviet Union gained *de iure* recognition by other members of international community (i.e., beginning with the treaty with Italy in 1924), it has generally been recognized that trade delegations are a part of the diplomatic mission of the country of its accreditation, although in certain treaties diplomatic status is granted only to a limited number of the foreign trade delegation's staff. As part of the diplomatic mission, the trade delegation is not subject to the jurisdiction of local courts. The 1933 regulation regarding the position of the Soviet trade delegation and trade agencies abroad has clarified this issue:

"Foreign trade delegations may appear before foreign judicial authorities as a defendant in litigations, which result from business transactions, which are made in a given country by the trade delegation, and then only in those states, where the government of the Soviet Union has assumed, either in an international agreement, or through a unilateral declaration communicated to the government concerned, its acceptance that its trade delegation shall be subject to the jurisdiction of local courts."⁹⁷

The general meaning of this formulation is that unless the Soviet government states that it accepted such an obligation in an international treaty it could claim sovereign immunity from the jurisdiction of foreign courts in the country where the transaction was made and the Soviet foreign trade delegation was involved.

As time went on, however, such reservations lost their significance, owing to the fact that, since the middle thirties, it had become prevailing practice that foreign trade transactions are no longer made abroad through the foreign trade delegations. They are now made by foreign trade associations resident in the Soviet Union, usually in circumstances indicating that *locus contractus* is the Soviet Union. This reverses a situation which was the regular feature of the foreign trade transactions in the beginning and, consequently, Soviet courts and Soviet law have become competent.⁹⁸

While trade and navigation agreements (particularly in recent years) stipulate Soviet acceptance of the jurisdiction of foreign courts in disputes in which the Soviet Union is a party; nevertheless, the fact that the responsibility of the Soviet state is involved affects judicial proceedings against the Soviet state.

Trade and navigation agreements normally provide that conservation measures are not permitted against the trade delegation. While conservation measures and judicial injunctions are not permitted, execution measures as a rule have been provided in most of the Soviet trade and navigation agreements with other countries. Soviet jurisprudential writers assert that this provision is an exception to the general rule that the property of the Soviet state, situated abroad, is not subject to execution, unless there is an express agreement by the Soviet government to that effect. Silence of trade and navigation treaties in this respect ought to be similarly interpreted.⁹⁹ And yet,

this interpretation cannot be upheld in light of the practice of the Soviet Union in its early days of trade relations with foreign countries when the government used to deposit gold and foreign currency in foreign banks as security for the fulfillment of obligations. A generally accepted clause in trade and navigation treaties drew the distinction between that part of the property of the Soviet state which served the realization of sovereign rights or of diplomatic or political rights, and that which consisted of sums in banks, stocks of goods belonging to the Soviet Union, claims against foreign firms, etc., in other words, property which was clearly connected with commercial transactions.¹⁰⁰

12. Travel Restrictions upon Diplomatic Personnel in the Soviet Union

On May 16, 1941, the People's Commissariat for Foreign Affairs addressed a circular note to the diplomatic and consular missions in the Soviet Union which announced that the Soviet government established, as of that date, a procedure whereby travel of diplomatic and consular representatives in the USSR, as well as of employees of foreign embassies, legations and consulates, could take place only on condition that such persons previously inform the appropriate organs of the People's Commissariat for Defense and the People's Commissariat for the Navy. To properly register such trips, foreign diplomats should indicate in their requests the itinerary, points of stop-over and the length of travel.

Simultaneously, the Soviet government declared certain localities prohibited for travel in the USSR, attaching a list of such localities. In practical terms the prohibitions eliminated the possibility of travel beyond a 50-kilometer radius from the center of Moscow. However, even within this radius certain counties were closed to foreign diplomats.¹⁰¹

These restrictions clearly were designed as security measures and were enforced during the war with Germany. They were never abolished or withdrawn, although following the end of the war they were temporarily relaxed.

As relations between the Soviet Union and the Western world continued to deteriorate, on September 30, 1948, the Soviet Ministry of Foreign Affairs again notified all foreign missions in Moscow that the 1941 regulations were still in force, and added new localities and areas to the list of prohibitions. They also introduced a new procedure for notification of proposed travel in the Soviet Union. Under the new arrangement, foreign diplomats were required to give the Soviet Foreign Office (military personnel—the Foreign Liaison Section of the Ministry of the Armed Forces) 48-hours notice of their intention to travel more than 50 kilometers outside Moscow. Beyond this 50-kilometer zone, travel was permitted by public carrier only, except to three points of historic interests near the city. Even within 50-kilometers certain areas were closed for travel, with the result that automobile travel to the 50-kilometer limit was possible on only four highways.

In general, the border areas, the Central Asian Republics, the Caucasus region, except Tiflis, the Baltic States, and the western areas of the Ukraine and Byelorussia, including the capital cities of Kiev and Minsk, were placed within the zones prohibited to foreign officials. Although most of Siberia was left technically "free," in practice it was greatly restricted, owing to the fact that the important cities were forbidden areas and, therefore, no facilities were available for foreign visitors.¹⁰²

On January 15, 1952, the Foreign Affairs Ministry prohibited twenty-two additional USSR cities to foreigners and reduced the zone around Moscow from 50 to 40 kilometers from the center of the city. In addition, several more districts within the 40-kilometer limit were placed on the prohibited list, thus reducing to a great extent the number of places to which foreign officials could travel in the USSR and in the Moscow area.¹⁰³

As a result of these actions, the United States government instituted retaliatory measures. In the note of March 10, 1952,¹⁰⁴ the Department of State limited the movement of Soviet diplomatic officials and newspaper men located in Washington to a 25-mile radius from the center of Washington, and those located in New York, including Amtorg officials, were limited to the area within 25-miles from the center of New York. It also introduced a duty of reporting travel plans of officials affected by these restrictions in a manner similar to that instituted by the Soviet Union.

During the following period, on several occasions the United State government urged the Soviet government to relax its restrictions and complained of frequent refusals to permit travel by American diplomats even to open areas. The Soviet note of June 15, 1957,¹⁰⁵ explained that these refusals were of a temporary nature. Finally, the Soviet note of August 28, 1957, amended existing travel regulations and opened five cities in the Soviet Union, and a number of smaller towns around Moscow to travel by foreign diplomats. However, it closed about 120 square miles of Soviet territory which formerly had been open to foreign diplomats.¹⁰⁶ American travel restrictions were adjusted accordingly.

13. Agreements on Extension of Diplomatic Privileges

The Statute of 1966 provides for agreements regarding the extension of privileges and immunities to persons connected with the diplomatic mission who, under the standard provisions of the statute, are outside the full scope of these privileges and immunities. Article 16, paragraph 3, provides for agreements regarding the status of administrative and technical personnel. Such an agreement may extend to this category all privileges which are, in principle, due exclusively to the diplomatic staff of a mission. The same applies to a mission's service personnel (article 17, paragraph 2). There is no mention of domestics employed by the staff of a mission.

The privileges which various countries extend to members of a foreign mission are not always identical. In 1956 a conflict arose between Great

Britain and several foreign countries regarding the "immunities from suit or legal process conferred by law on servants, or on members or families of members of the official staff, or of the envoys." To equalize the status of persons attached to British missions abroad, the Diplomatic Immunities Restriction Order of March 31, 1956,¹⁰⁷ restricted immunity from suit and legal process available to various categories of members of missions in the United Kingdom. Of these, two categories were applicable to the Soviet Union, namely those restrictions affecting immunities conferred by law on members of the mission below the rank of attaché, and the other, the servants of the head of the mission.

These restrictions were lifted by Order No. 1579¹⁰⁸ of 1956. This second change in policy as regards treatment of members of the Soviet Mission in the United Kingdom was due to the fact that during the intervening period Britain and the Soviet Union had concluded an agreement regarding the treatment and the extent of immunities due to the two categories of persons. While the Order withdrawing immunities from suit and legal process has opened the way to settlement of the conflict by means of an agreement, the text of the 1966 Statute indicates that the current policy of the Soviet government is not to recognize broader immunities than those stated in the statute, except by conclusion of separate agreements with countries concerned.

In response to the situation created by the British order, the Soviet Union agreed to grant diplomatic immunities to technical and service personnel of the British mission, and the Soviet government adopted (March 27, 1956) a decree which made it a rule that such personnel be granted diplomatic immunities, on condition of reciprocity. Following this, the United States government proposed that similar status be granted to American non-diplomatic personnel of the Soviet mission and similar Soviet personnel in the United States. The two governments agreed accordingly.¹⁰⁹ In due course, the principle established by the 1956 decree was repeated by the 1966 Statute.

At times, however, the Soviet Union granted immunities and rights which did not require reciprocity. In February 1918, following the establishment of diplomatic relations between Germany and the Soviet State, the Soviet government agreed that the German Embassy should maintain its own security guard in view of conditions prevailing at that time in the Soviet capital. In 1941, following the outbreak of hostilities with Germany, and its ensuing involvement in the war on the side of the Western powers, the Soviet Union instituted diplomatic discount rates for the allied missions in Moscow. Close cooperation with the Western powers in that period called for a considerable expansion of the personnel of the allied missions which, in view of the unrealistic exchange rate of the ruble, made the maintenance of large missions extremely onerous. On February 28, 1950, the Soviet Ministry of Foreign Affairs advised foreign missions that the Council of Ministers of the Union had ordered, as of July 1, 1950, a discontinuation of the arrange-

ment under which diplomatic representatives in the Soviet Union could buy rubles with foreign currencies at the diplomatic rate of exchange.¹¹⁰

14. *General Conditions of the Diplomatic Regime in the Soviet Union*

While legislation affecting the rights of foreign diplomats in the Soviet Union meets generally accepted standards in international relations, and while, specifically, the 1966 law adheres quite closely to the convention on diplomatic privileges worked out by the United Nations International Law Commission, some of the guarantees of Soviet laws, specifically those regarding the personal inviolability of foreign diplomats, are frequently violated. Foreign diplomats are detained, searched, and their property sometimes confiscated and destroyed.

One of the most important reasons for this treatment is the Soviet preoccupation with preserving an image of a perfect social order and of a superior governmental system. Soviet society must be seen as not only well governed and highly civilized, but also able to meet all the necessities of the Soviet populace, permitting a dignified and fairly comfortable existence. In addition, the Soviet government and Soviet people at times demonstrate high sensitivity as regards the remaining vestiges of the primitive conditions of old Russia. Foreign diplomats also must take into consideration that, while governmental power in the Soviet Union is highly centralized, the exercise of police powers is to a large extent local in nature and the responsibility of social organizations. Arrest of diplomats is frequently the work of local police agents, including members of the public.

However, this fact does not absolve the Soviet government of responsibility, for the exaggerated sensitivity of the Soviet public is largely due to the flow of articles in the Soviet press which constantly harps on the danger of espionage by visiting foreigners and diplomats.

While campaigns calling for vigilance and protection of state interests and defense secrets from foreign espionage are the result of constant fluctuations in Soviet public opinion due to international events, generally the average Soviet citizen is not accustomed to the presence of foreigners. Foreign travel is restricted, diplomats are confined to a very limited area around Moscow, and when Soviet citizens happen to come into contact with isolated foreigners (they travel mostly in groups), their suspicions are aroused and incidents often take place. The government in Moscow usually sides with local authorities, which eventually leads to declaration of individual diplomats as *persona non grata* and retaliation in the form of the expulsion of a corresponding number of Soviet diplomats.

This game of retaliation seriously affects the tone and the climate of diplomatic intercourse of the Soviet government with foreign countries.

While the frequent declaration of members of the diplomatic corps as *persona non grata* disrupts the work of foreign missions in the Soviet Union, another form of harassment is interference of Soviet authorities with the

work of Soviet citizens employed by foreign missions in the Soviet Union. During the period of tense relations between the Soviet Union and Great Britain, Soviet citizens left their employment in the British Embassy in Moscow, and, as the memorandum addressed by the British Embassy to the Ministry of Foreign Affairs suggested, this was a form of pressure exercised in order to disrupt the operation of the British mission. The Soviet Ministry of Foreign Affairs rejected the complaint, alleging that relations between the Soviet government and Soviet citizens could not be considered as falling within the competence of the British Embassy.¹¹¹

Another aspect which colors Soviet diplomatic intercourse with other countries, particularly those of the West but recently also those with the communist government of China, are reprisal demonstrations against foreign missions, often occasioned by the demonstrations of refugee groups in Western countries.

III. CONSULAR SERVICE

Soviet law on consular organizations, both abroad and at home, includes internal legislation, international treaties, and customary international law. While Soviet legislation dealing with the functions and duties of Soviet consular missions and consuls abroad must be distinguished from similar regulations dealing with the regime of foreign consular missions and consuls in the Soviet Union, they supplement each other because of the reciprocity principle. It is obvious that the Soviet government, regulating the duties and functions of its consuls in other countries, anticipates that the duties and functions of foreign consuls in the Soviet Union will be similar to those Soviet consuls, and that the regulations governing foreign consuls in the Soviet Union will be reflected quite effectively in those affecting Soviet consuls abroad.

A. Soviet Legislation on Soviet Consular Missions Abroad

The beginnings of the Soviet consular service abroad are connected with the efforts of local soviets of some Siberian cities to assume the direction of international affairs more consonant with their own interests. In a number of these cities, foreign relations departments of the local government were established, headed by commissars for foreign relations. While the Soviet government in Moscow sought to reassert its authority in various provinces in Russia, it at the same time directed the attention of the Siberian soviets and the foreign relations commissars to consular and border affairs in the neighboring provinces of China, and in particular to securing Russian state property in Chinese cities. The instruction of the People's Commissar for Foreign Affairs of February 22, 1918, emphasized the commercial duties of

Soviet consular agents in the Far East, and particularly in China, urging them to use every opportunity to replace imperial consuls with agents representing the new order.¹¹²

The first systematic legislation providing for the organization of Soviet consular service abroad, and determining its duties, subordination, and relationship to the diplomatic branch of the foreign service, was the decree of October 18, 1918.¹¹³ The concept of the consular function was still an orthodox one. The function of the consul was to represent the economic interests of the state, those of all commissariats of the Soviet government, and to protect economic, legal and social interests of Soviet citizens. Consular duties did not include representing the political interests of the Soviet state, which were the responsibility of the Commissariat for Foreign Affairs, and of the Commissariats of Defense and the Navy. Representing these interests was the responsibility of the diplomatic missions. However, in exceptional cases it was possible to entrust the conduct of diplomatic relations to consular missions, while consuls of the receiving countries could be assigned similar functions and responsibilities in Russia.

According to the 1918 decree, in addition to consuls de carrière, honorary consuls could be appointed. Consular service was a branch of the foreign service, under the People's Commissariat for Foreign Affairs, and consulates in each country were subordinated to the diplomatic mission there.

The text of the decree suggests that the Soviet government had not yet decided as to what technique of trade relations it was to use with foreign countries, and therefore considered the consular service as the proper channel for cooperation with foreign business circles. The idea that such trade relations would require a special network of agencies was not yet manifest. The decree provided that trade and financial agents appointed by the Commissariat for Trade and Industry, and by the Commissariat of Finance, were to be posted in the Soviet consular missions, and that the consular service should have the responsibility for trade transactions.

The central idea of the 1918 decree was that it dealt with the consular service as a part of the foreign service, and was distinguished from the diplomatic missions not so much by the character of the service as by a difference in duties and responsibilities.

The 1918 decree was replaced by the Statute of Soviet Organs Abroad, adopted by the Council of People's Commissars on May 26, 1921,¹¹⁴ which reorganized Soviet consular missions in foreign countries along the lines which have become characteristic of the present-day Soviet consular service. By that time it was apparent that the Soviet state foreign trade monopoly would call for the organization of a separate foreign trade service and that it could not be handled through the consular missions. Consequently, economic duties no longer were assigned to consular missions. These missions have since concentrated on the protection of Soviet citizens, rendering legal assistance in matters of inheritance, protection of Soviet ships in foreign ports, etc.

During the following years, the Soviet government continued to issue regulations dealing with the duties and the status of Soviet consuls. This was due, among other things, to the fact that the Agreement on the Creation of the Soviet Union had vested the responsibility for foreign relations in the government of the Soviet Union.¹¹⁵ On October 27, 1925, a new Statute on the Soviet Consular Service of the USSR was enacted.¹¹⁶ It was a lengthy document which encompassed all aspects of the duties and organization of the Soviet consular service. It came into force January 1, 1926, and is referred to as the Consular Statute of 1926. It still endures as the basic piece of legislation for the Soviet consular service.

B. *Soviet Legislation on the Regime of Foreign Consular Missions in the Soviet Union*

Following the 1917 revolution, there was a gradual withdrawal of foreign diplomatic missions from Russia. This situation lasted until Soviet Russia had achieved some stability. Then the Bolshevik government began to press for the normalization of its relations with other countries, frequently forcing the closing of still surviving consulates of foreign powers. One of those was the American consulate in Vladivostok, which continued to function until 1923 when it was closed by the Soviet authorities because it had failed to produce a new consular patent and obtain *exequatur* from the Soviet government.¹¹⁷

The first act dealing with the status of foreign consular missions in the Soviet Union was the Statute of Foreign Consular Agents in Russia issued on June 30, 1921.¹¹⁸ This statute was adopted simultaneously with a similar statute dealing with the regime of foreign diplomatic missions in the Russian capital.¹¹⁹ In due course, when the Soviet Union was established and the regime was firmly in the saddle, the 1921 Statute was replaced by the new Statute on Diplomatic and Consular Service in the Soviet Union of January 14, 1927.¹²⁰ Chapter II of this statute deals with the rights and the privileges of foreign consular agents in the Soviet Union. Appointment of foreign consuls to missions called for their acceptance by the government of the Union after 1923. In view of the fact that consulates maintain relations with local authorities, the 1927 Statute also required that a similar acceptance be obtained from the government of the Union republic where a consular mission was active.

The 1927 Statute remained in force for almost four decades, being replaced by the Statute of 1966, which again dealt with the status of both diplomatic and consular missions in the Soviet Union.¹²¹

C. Consular Agreements with Other Countries

Before World War II the Soviet Union had four international conventions and treaties on consular matters: with Poland, July 18, 1924;¹²² with Germany, October 12, 1925, which was a part of the General Treaty which dealt with all aspects of Soviet-German cooperation;¹²³ the exchange of notes with Sweden, February 2, 1927;¹²⁴ and with Czechoslovakia, November 16, 1935.¹²⁵

In addition to these formal conventions and treaties providing for the establishment of consulates in the respective countries, provisions for exchange of consular agents are to be found in treaties of commerce. There were early treaties of friendship and other political agreements with the oriental neighbors of Russia. In this category was the treaty with Afghanistan of February 28, 1921, article 3 of which regulated the status of consuls in the receiving country. Article 5 outlined the organization of consular services in both Russia and Afghanistan.¹²⁶ The treaty with Persia of February 26, 1921, article 23, listed the consular missions to be established.¹²⁷ Similar provisions are found in articles 4 and 5 of the treaty with Mongolia of November 5, 1921,¹²⁸ and in the notes exchanged with Finland on January 2-4, 1923.¹²⁹

Provisions regarding the establishment of consular services were included in the peace treaties with Lithuania, Latvia and Estonia, and also in commercial treaties and agreements with these countries.

Following World War II, the Soviet Union concluded consular conventions with all countries belonging to the Socialist Commonwealth of Nations: Albania (September 18, 1957);¹³⁰ Bulgaria (December 12, 1957)¹³¹ Hungary (December 12, 1957)¹³² the Korean People's Republic (December 16, 1958);¹³³ Mongolia (August 25, 1958);¹³⁴ Poland (January 21, 1958);¹³⁵ Rumania (September 4, 1958);¹³⁶ Czechoslovakia (October 5, 1957);¹³⁷ the German Democratic Republic (May 10, 1957);¹³⁸ the Democratic Republic of Vietnam (June 5, 1959);¹³⁹ the Chinese People's Republic (August 10, 1959);¹⁴⁰ and Yugoslavia (July 21, 1960).¹⁴¹

Of the prewar consular conventions and agreements only the exchange of notes with Sweden is still in force. Treaties and conventions with the Baltic republics are no longer in force, as they were annexed by the Soviet Union. The convention with Poland was declared abrogated following Poland's partition in cooperation with Germany. The 1935 consular convention with Czechoslovakia was terminated upon the conquest of Czechoslovakia under pressure from Germany. In the post World War II period, the Soviet Union concluded consular conventions with West Germany on April 25, 1958,¹⁴² with Austria on February 28, 1959,¹⁴³ with the United States on June 1, 1964,¹⁴⁴ with the United Kingdom on December 2, 1965,¹⁴⁵ with Japan on July 30, 1966,¹⁴⁶ and with Sweden on November 30, 1967.¹⁴⁷

D. Consular Missions

According to article 1 of the Statute of the Soviet Consular Service of 1926, "Consular agencies of the Union of Soviet Socialist Republics are consulates general, consular departments of the diplomatic missions, consulates, vice-consulates and consular agencies."

Also the 1966 Statute on Diplomatic and Consular Missions of Foreign Countries in the Soviet Union lists consuls general, consuls, vice-consuls and consular agents (article 19), presumably heading consular missions, and styled according to the rank of the consular officers concerned. The only omission in the list of classes of consulates of foreign countries is the consular department of foreign missions. The reason seems to be that such departments constitute an integral part of the diplomatic mission, and its staff are therefore a part of the diplomatic personnel employed by the mission.

While Soviet internal legislation on foreign consuls and consulates in the Soviet Union is silent regarding consular departments, consular agreements with other countries determine their position, both as to the role of consular official and as to their status as members of the diplomatic missions. Members of diplomatic missions performing consular functions are controlled by agreements concerning those functions and have all consular powers attaching thereto. Members of the consular departments remain members of the diplomatic staff, as performance of consular functions cannot affect the diplomatic status of such personnel. This provision, found in most of the post-World War II conventions, is typically represented by article 29 of the U.S.-Soviet Consular Convention:

"1. The rights and obligations of consular officers provided for in the present Convention also apply to members of the diplomatic staff of the diplomatic mission of the Contracting Parties charged with the performance of consular functions in the diplomatic mission and who have been certified in a consular capacity to the foreign affairs ministry of the receiving state by the diplomatic mission.

"2. Except as provided in paragraph 4 of article 10 of the present Convention, the performance of consular functions by the persons referred to in paragraph 1 of this article shall not affect the diplomatic privileges and immunities granted to them as members of the diplomatic mission."¹⁴⁹

In contrast to its attempts to reform the ranks of its diplomats and diplomatic missions, the Soviet government experienced no such urge as regards the consular service, and adopted the then existing pattern for its consulates and for the ranks of consular officers.

The only departure from the practice of other nations was the discontinuation of the practice of appointing honorary consuls, that is to say, citizens of the receiving country, who perform consular duties in view of their specific connections with the business circles of the sending country. The decree of 1918, which was the first piece of Soviet legislation concerned with the organization of the Soviet consular service abroad, still recognized

the institution of honorary consuls and provided designating foreign citizens as honorary consuls. The instruction of 1921 was silent on this point, and the 1926 Statute definitely ruled out the possibility of making such appointments in the future. The nature of the consular service was defined so as to exclude foreign citizens from performing consular functions abroad.

Article 9 of the statute provided that "Consuls, consular agents, secretaries and other officials of consulates and other establishments are in the public service of the USSR under the People's Commissariat for Foreign Affairs. They are strictly forbidden to take a direct or indirect part in private institutions and enterprises." And article 10 provided that "Only citizens of the USSR may be appointed consuls or consular agents."

These two conditions, requiring the absence of personal connection with the economic ventures abroad and Soviet citizenship, rule out performance by foreigners of consular functions of any kind.

The interwar consular agreements with Poland and Czechoslovakia and the exchange of notes concerning the establishment of consular service with Sweden state that only nationals of the sending country may be appointed as consuls, and that they cannot engage in trade or business in the country of their sojourn. This principle is also restated in all consular conventions concluded by the Soviet Union with other countries. So, for instance, article VI of the Consular Convention with Japan states: "Any consular officer shall be a national of the sending country." Article 3 of the U.S.-Soviet Consular Convention contains the same provision.

This development resulted from two factors. First, economic relations became the responsibility of a separate branch of the foreign service, representing the Ministry of Foreign Trade, rather than the Ministry of Foreign Affairs. Second, the need for numerous economic contacts with foreign countries was dispensed with due to a reorganization in the Soviet government. The high degree of centralization of government functions ruled out the usefulness of broad contacts with commercial and industrial organizations, import and export firms, and other economic entities. The monopoly of foreign trade, combined with the efficient centralization of the Soviet industrial establishment, permits trade relations to develop through a single channel of trade representation, or through the foreign trade associations based in Moscow. While small countries like Holland, Finland or Belgium maintain a vast network of consulates, mostly honorary consuls who watch over the interests of their nationals and explore trade opportunities, Soviet consulates are limited exclusively to protecting interests of the Soviet state and of Soviet nationals other than those rooted in foreign trade with the receiving country. Even in situations involving the treatment of individuals, government interests usually are involved. The number of Soviet citizens travelling or residing abroad is limited. Soviet ships visiting foreign ports are owned by government shipping firms and supervised by the Soviet Merchant Marine Ministry. Thus, conflicts involving them also directly involve an important government agency.¹⁵⁰

The establishment of Soviet consular missions abroad and of foreign consular missions in the Soviet Union is a matter for international agreement with the countries concerned. Article 2 of the Soviet-American Consular Convention of June 1, 1964, provides:

“(1) A consular establishment may be opened in the territory of the receiving state only with that state’s consent.

“(2) The location of a consular establishment and the limits of its consular district will be determined by agreement between the sending and receiving states . . .”

The same applies for liquidating consular missions. During the interwar period, Germany had a number of consulates in the Soviet Union which subsequently were liquidated, following the emergence of Hitler’s regime in Germany and the change in the foreign policy of the Soviet Union.¹⁵¹ At that time, five German consulates at Leningrad, Tbilisi, Kharkov, Vladivostok and Odessa were closed. In July 1940, following the Ribbentrop-Molotov Pact, German consulates in Leningrad and Vladivostok were re-established, only to be liquidated following the outbreak of hostilities between the two countries in June 1941.

Article 19 of the 1966 Statute provides that “a foreign consular mission exercises its functions only within the limits of the consular district. Location of a consular mission and limits of the consular district are determined in an agreement between the USSR and the foreign state concerned.”

While the general Soviet tendency is to assimilate the status of consular with that of diplomatic missions, the distinction between their functions still is maintained. Rupture of diplomatic relations does not itself signify that consular relations also are broken. After the revolution, when the Allied and Associated Powers withdrew their diplomatic missions from Russia, their consulates remained. Also, when in the spring of 1926 the Soviet government broke diplomatic relations with China and withdrew its diplomatic missions from Peking, it continued to maintain a Soviet Consulate General in the Chinese capital, and kept consulates in other cities. It was not until July, 1929, that Soviet consular agencies ceased functioning in China.

Declaration of war is considered a reason for terminating consular missions in the same manner as is done with diplomatic missions. The Statute of 1926, in articles 137 and 138, gave Soviet consuls detailed directions as to how they should act in case war were declared between the USSR and the country in which they reside. Under the 1925 Consular Convention with Germany (article 8), in case diplomatic relations between these countries were severed, the consuls as well as all official personnel and their families were to be granted free departure from the country of their mission within the first six days. None of the post-World War II consular conventions and treaties concluded by the Soviet Union with other countries contained similar provisions.

Provisions of the Soviet-German Treaty of 1925 certainly were in accordance

with the rules of international law. However, when the Soviet Union decided to invade Poland on September 17, 1939, it did not consider itself bound by the terms of the Polish Consular Convention which provided diplomatic privileges for consular personnel. According to the report of the Polish ambassador to the Soviet Union on September 30, 1939, Mr. Matusinski, acting consul of Poland in Kiev, was summoned to the plenipotentiary of the Soviet Foreign Office at 2 o'clock in the morning, ostensibly to discuss the final details of his departure. He went at once, with two chauffeurs, in the company of two police cars. He, his chauffeurs and their car vanished without trace.

Italian Ambassador Rosso, deputy dean of the diplomatic corps in Moscow, intervened with the Soviet Deputy Commissar for Foreign Affairs, Potemkin, and received a reply that Potemkin had no information from local authorities. Potemkin pointed out that as the Polish consul had already lost his diplomatic privileges he could be called to account by Soviet authorities if it appeared that he had committed some crime against the Soviet Union. Ambassador Rosso replied that he saw no possibility of that, for through September 18 the Polish consul had enjoyed full diplomatic privileges and that from that day on he had been interned and could commit no crime whatsoever. Rosso's intervention with Molotov produced no results. He was informed that the Soviet authorities had no information concerning the Polish consul.¹⁵²

E. Soviet Consulates Abroad and Foreign Consulates in the Soviet Union

Initially when the Soviet Union sought to reestablish its contacts with the outside world, the Soviet government was on the whole willing to see foreign consulates established in the Soviet Union. The turning point came in the year immediately preceding World War II, when the Soviet Union applied the so-called parity principle, matching the number of consulates established by individual states in the Soviet Union with those kept by the Soviet Union in the respective countries. As Molotov announced in the Supreme Soviet during January 1938, the Soviet Union had initiated a policy of removing some consulates which he asserted, were engaged in subversive activities (espionage and sabotage). This affected the Polish, Japanese and German consulates. Furthermore, a number of Italian, Turkish, Iranian, Afghan, and Latvian consulates also were to be closed. To apply the principle of parity, the Soviet Union closed a number of Soviet consulates in those countries. It did not apply the principle of parity to other countries where the Soviet Union maintained consulates, although those countries maintained no consulates in the Soviet Union.¹⁵³ At that time, consulates from fourteen countries were closed: Afghanistan, Czechoslovakia, Denmark, Estonia, Germany, Great Britain, Iran, Italy, Japan, Latvia, Norway, Poland, Sweden and Turkey.¹⁵⁴

Soon after World War II, the Soviet Union closed its consulates in New York and in San Francisco, ordered the American consulate closed in Vladivostok and withdrew its agreement to the opening of an American consulate in Leningrad.

In April 1949, the Soviet Union closed all its consulates in Italy, perhaps partly in reaction to Italy's decision to join the North Atlantic Treaty Organization, and partly to forestall a possible Italian request to invoke the principle of reciprocity in support of its previous request for the opening of an Italian consulate in Odessa.¹⁵⁵ The Soviet Union also closed its four consulates in Iran because of deteriorating relations between those two countries in 1949.¹⁵⁶

Despite the decision of other countries to retain their diplomatic and consular officials at their original posts in the face of the Chinese Communists' advance in mainland China, the Soviet Union alone ordered the closing of its consulate in Shanghai in May 1949 on the ground that it did not recognize Mao-Tse-Tung's government.¹⁵⁷ The Soviet consulates in Zagreb and Split, Yugoslavia, were closed on March 31, 1951, in a chain reaction that first began with Tito's break with the Cominform.¹⁵⁸ In 1966 there were, according to the Soviet press, only seven foreign consulates in the Soviet Union.¹⁵⁹

F. The Head and the Personnel of Consular Missions

Ranks of Soviet consular officials parallel those of consular officials admitted from foreign countries to the Soviet Union. The same reasons which exclude the appointment of foreign citizens from performing consular functions for the Soviet Union as honorary consuls make it impossible to appoint Soviet citizens to act as honorary consuls of foreign countries. All economic activity being the monopoly of the Soviet state, participation of individual Soviet citizens in such activity takes place through employment in the economic administration of the Soviet Union.

Soviet consular conventions specify, in addition to heads of consular establishments, the following class of persons employed in consulates, both Soviet and foreign: consular officers, including persons not in charge of consulates who hold official titles of consul or vice-consul. To the same category belong consular trainees and secretaries, and advisers authorized to perform consular functions. In addition, consular conventions specify consular employees such as clerks, translators, typists, shorthand typists, bookkeepers, chauffeurs and other service personnel. Consular conventions with the socialist countries add the category of consular agents, also listed in article 1 of the 1966 Statute.

The Statute of 1966 provides a formal procedure of appointment exclusively for the head of a consular mission. There are no rules regarding the appointment of consular officers or consular employees. A consul general,

consul, vice-consul, or consular agent appointed as a head of a mission must be received as such by the Ministry of Foreign Affairs of the USSR. The 1927 Statute (article 9) provided that appointment of a consul also required the agreement of the republic where his consulate and consular district were located. The 1966 Statute removed this requirement. Appointment to such positions is proved by the submission of a consular patent and the agreement of the Soviet Union takes the form of *exequatur* placed on the consular patent.

Provisions of international agreements as to appointments of consular personnel are far more detailed.

These conventions require the approval of the receiving state prior to the appointment of a head of a consular establishment. The consular commission must be submitted prior to the consul's arrival, and must specify the name of the consular mission to which he is appointed, the consular district, the citizenship of the consul, his class, and the locus of the office. A consul may be appointed and enter upon his duties only after receiving an *exequatur* from the Ministry of Foreign Affairs of the receiving country. Appointment of all other consular officers, and of consular employees, requires proper notification giving their names, functions and class prior to their arrival. The receiving state then issues proper documents stating the right of the new consular officers to perform functions for which they were appointed.

The receiving state at any time may declare a member of a consular mission (officer or an employee) as *persona non grata*. In such a case the sending state is obliged to recall such a person. Should it fail to do so, the receiving state may refuse to recognize such a person as a member of the consular establishment.

All communications are made through diplomatic channels, and some conventions (e.g., Japanese) provide that the same method shall be used in cases of recall and termination of consular appointments by a sending state. Post-war consular conventions provide that only nationals of the sending state shall be appointed to consular positions (see, e.g., Soviet-German Consular Treaty of 1958), and that no national, either already present or travelling in the territory of the receiving state, shall be appointed to a consular position. This does not apply to consular or diplomatic officers already appointed to diplomatic or consular positions in the receiving state.

The sending state may temporarily fill vacancies in the positions of heads of consular missions by appointing a diplomatic or a consular officer already admitted by the receiving country.

G. Organization of Soviet Consular Establishments Abroad

Organization and the internal regime of the Soviet consular service is the exclusive province of Union legislation. Ranks of consular officers follow the general pattern of the consular establishments which the Soviet Union

maintains abroad: consuls general, consuls, vice-consuls, and consular agents. In addition, the law of 1926 mentions consular secretaries. Consular personnel are appointed by the Ministry of Foreign Affairs, and consuls and consular agents (heads of consular missions) receive consular commissions (credentials and consular patents) indicating their consular districts. According to the law of 1926, consuls and consular agents may assume their duties only after proper notification of the government of the receiving country. In cases where the Soviet Union has consular conventions with other countries, the statutory provisions are replaced by the procedures for appointment of consuls and of other consular personnel provided for by such conventions.

The 1926 law also provides that during the illness or absence of the head of a consular mission his duties are assumed by the vice-consul, and if there is no vice-consul, his duties are assumed by the consular secretary.

Soviet consular practice seems to distinguish between two types of communication. One type is sent directly to the Ministry of Foreign Affairs, with copies to the diplomatic representative, while the others must be communicated through the diplomatic mission of the Soviet Union. The basis for distinction is conjectural. According to article 21 of the Consular Statute of 1926:

"Consuls communicate directly with the Ministry of Foreign Affairs on all matters of an economic or international-legal character, as well as on matters relative to administration or notarial functions, and on matters calling for instructions from the Ministry of Foreign Affairs."

In addition to extending protection to the interests of the sending state and its nationals, Soviet consuls in foreign countries have to

"... observe and gather information concerning the economic and political situation in their consular district, data regarding the development of trade, industry, agriculture, transport, the conditions of the financial market, data regarding social relations and the situation of labor, and to gather and communicate information regarding major civil maritime and commercial legislation and other information in accordance with the instructions of the People's Commissariat of Foreign Affairs."

It seems, therefore, that in matters which are within the regular range of consular duties consular agencies communicate directly with the Soviet Ministry of Foreign Affairs. All communications and observations fundamentally within the political functions of the diplomatic mission are routed through the mission. An exception to the general rule exists as to consular agents. Although ultimately responsible to the Ministry of Foreign Affairs, they are in practice subordinated to the consuls in whose districts they are assigned.

All heads of consular missions beginning with the consul general and ending with the consular agent receive their commissions from the Minister of Foreign Affairs. However, the position of consular agent differs in that in his service relations he is subordinated to the consul in whose district he was

appointed. In contrast, consuls of the three higher classes may address themselves directly to the central authorities of the Soviet Union in all questions requiring guidance and cooperation. They also communicate freely with the Soviet diplomatic mission and other Soviet consular missions in the country of accreditation. Consular agents have the right to address themselves to local authorities in their district; otherwise they must proceed through their consuls in the districts.

Another exception is found in the Note to article 17 of the Statute of 1926, according to which the People's Commissariat for Foreign Affairs may designate one of the Soviet consuls in dominions, protectorates, colonies, and other dependent territories of a receiving state, to be in charge of the whole consular service in a given territory. The designated consul is ultimately responsible to the Ministry of Foreign Affairs. The relations of consuls among themselves may be governed by one of two systems. Each consul in a given foreign country may be independent of every other, responsible individually and directly to the diplomatic representative and through him to the home Ministry of Foreign Affairs; or, consulates general may be established to which all consuls in the foreign country are subordinate. In Soviet law the first system prevails.

H. Consular Duties and Functions

Usual distinctions between diplomatic and consular functions do not wholly apply to Soviet conditions. Normally the duty of the diplomat is to represent the state, while that of the consular officer is to protect the interests of the nationals of his country. Soviet diplomats and consuls, are primarily concerned with the interests of the Soviet state, and protection of Soviet citizens is secondary.¹⁶⁰

1. Consular Functions and the Law of the Sending and of the Receiving State

According to the 1926 Statute, Soviet consuls in the receiving country administer Soviet laws, observing in the process the legislation of the receiving country. They are bound by the regulations of the receiving country defining their position, controlling the cooperation of local authorities, and the actions of individuals and legal entities which come into contact with Soviet consular officers, thereby involving Soviet consuls in the processes of law in their districts. So, for instance, although a Soviet consul in a foreign country, or a foreign consul in the Soviet Union, has the right to celebrate the marriages of Soviet nationals, he must conform to the rules as regards the capacity of the parties to contract a marriage, and he should record the marriage according to the laws of the receiving country.

Article 2 of the 1966 Statute on the Status of Diplomatic and Consular Missions in the USSR states, similarly, that members of diplomatic and

consular missions are obligated to respect the provisions of Soviet legislation.

Consular functions and duties may be classified according to how much conformance with local laws and involvement with local authorities they require. In no case may consular activities violate the laws of the receiving state.

Conforming with the local law is, on principle, always required when the consular act is to produce an effect in the receiving state. At times, a consular act requires cooperation of local authorities, as its aim is to produce a legal effect determined by local law. At other times, acts of consuls are not intended to achieve such a result, as they are intended to have legal effect in the sending state. In such situations, strict conformance with local law may not be necessary.

Typical functions of this type are those which fall within the duties of the vital statistics office of the sending state as regards the personal status of the nationals of that state (registration of the nationals, changes in their personal status, marriages, divorces, accepting declarations regarding nationality, registration of births and of deaths, renewal and issue of visas and passports). In the same category are various attestations, authorizations, and affidavits, and notarization of documents to be used outside the accepting state. Such acts may also be performed for the benefit of the nationals or juristic persons of the receiving state. Once, however, consular documents are produced and admitted for the use of the authorities of the receiving state, they must be given the credence of official documents. They are official certified copies, documents, translations, and in this respect they have a probative force equal to that of similar documents used by the authorities of the receiving state. The only requirement of consular conventions is that they must be drawn and prepared in accordance with the laws of the receiving state. The Japanese convention, however, is less categorical in this respect, as it provides that authorities of the receiving state shall recognize such documents only to the extent as they are consistent with the law of the receiving state.

Some consular functions concerning the presence of a vessel of the sending state are similar. The consul is an administrative authority of the sending state, in connection with the ship's business, crossings, personnel relations, documentation concerning the ship's voyage, cargo, etc. He may also settle disputes as to wages and contracts of service, arrange for the engagement or discharge of members of the crew, including the master, insofar as these affairs do not involve the shore authorities or the citizens of the receiving state. The terms of Soviet conventions with other countries vary. The Soviet convention with the United States used language which suggests a broad scope of consular activities in connection with visits of ships of the sending country to ports of the consular district:

"...exercising rights of supervision and inspection provided for in the laws and regulations of the sending state in respect to vessels used for maritime or inland navigation, having the nationality of the sending state,

and of aircraft registered in that state, and with regard to their crews.

“Extending necessary assistance to vessels and aircraft mentioned in the preceding subparagraph, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping ship’s papers, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the law of the sending state.”

All these functions, however, must conform to the laws of the receiving state.

So, for instance, the Soviet-Japanese Convention makes the reservation that consular functions with regard to ships, particularly those involving personnel relations, must be exercised without prejudice to the jurisdiction of the shore authorities.

The wording of the U.S.-Soviet Consular Convention is more simple, although the basic premise that consular functions may not prejudice the action of local authorities when local interests are involved is the same as in the Japanese convention.

“Without prejudice to the powers of the receiving state, a consular officer may conduct investigations into any incidents which occurred during the voyage on vessels sailing under the flag of the sending state, and may settle disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws of the sending state. A consular officer may request the assistance of competent authorities of the receiving state in the performance of such duties.”

The wording of the 1926 Soviet Consular Statute suggests that the consul’s prime function is to facilitate captain’s relations with the shore authorities, in particular as regards observance of port regulations.

The same applies to the landing of a Soviet airship or to the visit of a Soviet naval unit. The consul cooperates with port authorities, customs, sanitary authorities, airport officials, other administrative agencies, courts, etc., which are involved in the landing and operation of Soviet sea or air transports.

Other consular functions include the participation of the consul in local legal processes which are the responsibility of the governmental or judicial agencies of the receiving state. This applies in particular to inheritance and guardianship. According to the 1926 Consular Statute, in case of the death of a Soviet citizen, the Soviet consul has the duty to secure the estate of the deceased. In this respect he has the duty to follow the agreed procedure, or established practices in the receiving state. It is also his responsibility to accept in deposit the estate, according to the expressed desire of the testator.

To enable the consul to fulfill his obligations the authorities of the receiving state must inform a foreign consul of all circumstances which affect the nationals or the interests of the sending state, thereby offering said state an opportunity to participate in the legal processes which ensue. This particularly concerns such events as death, arrest, detention, action taken against a

vessel of the sending state in territorial waters of the receiving state, forced landings of airships, shipwrecks and similar occurrences.¹⁶¹ Authorities of the receiving state may not interfere with the consul in communicating with his nationals, visiting and advising them, or providing them with legal assistance as necessary. The consul should be consulted and given the opportunity to make proper motions or actions to protect the interests or the estate of the deceased, administer it, and in certain circumstances transmit the effects of the estate to the sending state. One of the important rights of the consular officer is the right to communicate with arrested persons. According to the U.S.-Soviet Convention:

“A consular officer of the sending state shall have the right without delay to visit and communicate with a national of the sending state who is under arrest or otherwise detained in custody or is serving a sentence of imprisonment. The rights referred to in this paragraph shall be exercised in conformity with the laws and regulations of the receiving state, subject to the proviso, however, that the said laws and regulations must not nullify these rights.”

According to the conventions with Austria and West Germany, consuls may represent legal interests of citizens and legal entities of the sending state in courts and before arbitration tribunals of the receiving state. Consuls participate in appointing guardians for the nationals of the sending state, or of their property, if it is left without supervision. At any rate, consuls may recommend persons for such guardian positions and, in case courts or authorities of the receiving state find them unacceptable, the consul may propose new candidates.

Powers of consuls to assure legal representation of their nationals are circumscribed by the laws of the receiving state. But Soviet consular authorities have the duty to take steps to protect the property and other interests of Soviet citizens, who are under a corresponding legal obligation to have their interests and property represented by Soviet consulates, or lawyers selected by them.

The 1926 Statute of Soviet Consuls Abroad, although couched in more general terms, differs little from Soviet post-war consular agreements with foreign countries. The emphasis is on the protection of rights accorded Soviet citizens in the country of their residence, either by local legislation or by international treaties and agreements to which the Soviet Union is a party. The law (article 35) lays stress on protection of the rights of the Soviet workingman and equal application of the labor regulations to take proper measures, normally in the nature of proper representations to the labor inspection and other agencies.

The interest of Soviet consuls in the affairs of Soviet citizens resident in their districts is not exclusively directed to their welfare. Article 40 of the Consular Statute imposes upon the Soviet consul a duty to maintain discipline and a proper attitude among Soviet citizens. In particular it is the duty of Soviet citizens to execute a consul's orders:

"The consul must see to it that citizens of the Union of Soviet Socialist Republics who are abroad either in a private capacity or in the performance of their duties for Soviet state organs, institutions or organizations, as enumerated in Article 39, *carry out all his legitimate orders*. In case of insubordination to such orders of the consul, the latter is to notify the People's Commissariat for Foreign Affairs in order *that the necessary measures may be taken*."

Article 41 reads:

"In case of extreme necessity a consul has the power, with the consent of the plenipotentiary representative, to order the citizen of the U.S.S.R. to return to the territory of the U.S.S.R. before the expiration of his legal sojourn abroad. In case of non-acceptance of such an order, the consul has the right, through the People's Commissariat for Foreign Affairs, to raise the question of the forfeiture of civil rights of the above-mentioned person before the Government of the U.S.S.R. The reports on this matter must be sent by the consul through the plenipotentiary representative of the U.S.S.R. residing in that country.

"Note: In the localities indicated in the Note to Article 17, the consul, in matters named in Article 41, may communicate directly with the People's Commissariat for Foreign Affairs."

One may ask whether a Soviet consul is restricted in the exercise of these and similar duties, involving political supervision of Soviet citizens, by the law of the receiving state, and whether that state may prohibit withdrawing the passport or citizenship from an alien admitted to legal residence in the receiving country.

Powers of Soviet consuls described in articles 40 and 41 of the Consular Statute of the Soviet Union are not covered by the provisions of any of the consular conventions with the other powers. It is doubtful whether Soviet authorities would accept a similar degree of consular supervision and control over aliens resident in the Soviet Union.

In order to perform their functions, consuls have the right to register their nationals residing in the receiving countries and communicate with them without interference from the local authorities. In addition, they have the right to issue passports and register changes in the family status of their nationals.

In certain situations, acts of consuls performed as domestic functions of the consul in relations with their nationals call for proper notification of consular actions to the authorities of the receiving state. Articles 19 and 20 of the Soviet-Polish consular convention require, for instance, that the births or deaths of citizens of the sending state, and registration (solemnization) of marriages should be communicated to Soviet offices of vital statistics.

Article 19 of the Soviet-West German Consular Convention contains a long catalogue of such functions:

Consuls may carry on the following activities at their offices and private living quarters, at the residences of citizens of their state where such citizens

give their consent, and on board vessels sailing under the flag of the sending state:

1. Receiving declarations from citizens of the sending state and drawing up and attesting to such declarations;
2. Drawing up and attesting to the wills and other unilateral instruments and declarations of citizens of the sending state;
3. Drawing up and attesting to agreements concluded between citizens of the sending state, provided that such agreements are not contrary to the laws of the receiving state. Consuls may not, however, draw up or attest any agreement concerning the establishment, alienation or termination of property rights to buildings and land situated in the receiving state;
4. Drawing up and attesting to agreements between citizens of the sending state and other persons and certifying the signatures of persons taking part in the consummation of the agreement, provided that such agreements relate exclusively to property or rights situated in the territory of the sending state and are to be carried out in the territory of that state, and provided that such agreements are not contrary to the laws of the receiving state;
5. Certifying the signatures, on documents of any kind, of citizens of the sending state;
6. Legalizing instruments and documents issued by the authorities or officials of the sending state or the receiving state, and certifying copies of such instruments and documents;
7. Translating instruments and documents of any kind and certifying such translations;
8. Accepting for safekeeping documents, money, valuables and other property from or for citizens of the sending state and legal persons which have their head offices in the sending state and are constituted in accordance with its laws;
9. Performing such other consular acts as may be required, provided that they are not contrary to the laws of the receiving state.

a. *Consular Marriages*

Article 37 of the Soviet Consular Statute of 1926 provided: "A consul must keep records of the civil status of citizens of the USSR abroad." This authorization gives Soviet consuls powers equal to those of certain civil servants in the Soviet Union who have power to register marriages, such registration being equivalent to the act of solemnization of marriages in the Soviet Union. As most Soviet consular conventions with other countries give consuls the right to register marriages, it is clear that under Soviet legislation this authority is the authority to solemnize marriages as such. The question then arises as to the effect of similar provisions as regards the powers of the other party's consuls.

The answer depends in the first place upon the law of the other party. Should registration be equal to solemnization of a marriage, according to the law of that other party, the consul of that other state has the power to

marry its nationals. This is true, in particular, as regards the consuls of the other socialist states. So, for instance, the Sino-Soviet convention (article 15/3) of 1959 states: "Consuls shall, where authorized to do so by the laws of the sending country . . . register marriages . . . where both parties to the marriage . . . are citizens of the sending country."

The answer is less certain when the law of the other country distinguishes between registration and solemnization. Does a consul of such a country have the right to solemnize the marriage as well as register it?

According to article 7(4) of the Soviet-American convention the consul has the right "to record marriages and divorces, if both to receive such declaration pertaining to family relationships . . . are citizens of the sending state, and also to receive such declarations pertaining to family relationships of a national of the sending state as may be required by the law of the sending state, unless prohibited by the laws of the receiving state."

It would seem that the American consul has the right to record or register changes in the civil status of American citizens, but not to solemnize their marriages. Soviet consuls in the United States, on the other hand, have the right to solemnize as well as record a marriage of Soviet citizens. However, such acts shall not have legal effect in the United States if prohibited under American law. Provisions of the Austrian and West German consular agreements are in line with the Soviet-American convention.

The RSFSR Code on Marriage, Family and Guardianship of November 19, 1926, provides that marriages between aliens and Soviet citizens, as well as those between foreign citizens alone, are governed by Soviet law in the same manner as marriages between Soviet citizens (article 136). The only exception is that, under conditions of reciprocity, marriages of aliens may be celebrated before consular and diplomatic officers provided that Soviet law of marriage and legal capacity of persons to contract marriage is respected.

Not all the family codes in the Soviet Union contain provisions identical with the RSFSR Code. The Ukrainian Code of the same date provided briefly that "marriages of aliens between them or with Soviet citizens contracted on the territory of the Ukrainian SSR shall be concluded according to the laws of the Ukrainian SSR."

There is no direct answer in the RSFSR Code on Marriage, Family and Guardianship to the question of which law governs marriages of Soviet citizens to aliens abroad. Article 107 of the Ukrainian Family Code of 1926 provided that the form of the place where a marriage is celebrated must be observed. Family codes of the following Union republics insist that, in order to be valid, marriages of Soviet citizens abroad must be celebrated (registered) in Soviet consular offices: Turkmenia (article 3), Azejbardjan (article 2), and Ukraine (article 105). It is possible, therefore, for a Soviet consul to interpret the provisions of the Soviet-American treaty as authorizing him to solemnize marriages of Soviet citizens in the United States, and in such cases American consuls would be entitled to solemnize marriages of American citizens in the Soviet Union, as the conditions of reciprocity

would be met. The problem of the legal powers of the American consul in this respect would depend upon U.S. consular regulations.

There are no doubts as regards consular powers in this respect under the Soviet-Japanese Consular Convention. It provides expressly:

“A consular officer shall be entitled, within the consular district: . . .

“(d) to register or receive notification of a marriage solemnized under the law of the receiving state or a divorce granted under that law, provided that at least one of the partners to such marriage or divorce is a national of the sending state;

“(e) to solemnize a marriage provided that both parties thereto are nationals of the sending state.”

I. Exceptional Duties

The duties and functions of consular offices are highly conventional, and their status and privileges are geared to those situations which a consul may normally encounter in the course of his official activities. Consequently, it is not usual to charge consuls with performance of duties for which they are not equipped. In Soviet legislation there are three exceptional situations where a consul may perform duties which are usually the responsibility of other governmental organizations.

The head of a consular mission may be given, in those countries where the Soviet Union does not maintain a diplomatic representative, the task of fulfilling the duties of the diplomatic representative of the Soviet Union. The decision to expand the duties of a consul into this area of relations with other states belongs to the Ministry of Foreign Affairs and, although the success of the Soviet consul in performing diplomatic functions depends upon the conduct of the receiving country, essentially this is a one-sided action. A consul's status with regard to receiving country will not be affected by the diplomatic functions.¹⁶²

A Soviet consul, or a Soviet consular agent, may be assigned the duty to perform consular functions in another country than that to which he is assigned.

Representation of Soviet economic interests is not within normal activities of the Soviet consular service. A separate branch of foreign service, foreign trade delegations, was established for that purpose. The 1926 Consular Statute (still in force) was issued at a time when the practice of appointing special trade delegations with diplomatic status to represent commercial interests of the Soviet Union was still in its infancy. The statute provides that operative functions of the People's Commissariat for Foreign and Internal Trade may be entrusted to Soviet consuls. Cooperation of such consuls with Soviet economic organizations in their consular districts may take place only when authorized by the Commissariat for Foreign Trade and other competent government departments involved. In such cases Soviet consuls are

guided by the directives of the ministries concerned (Foreign Trade, Foreign Affairs, and other economic ministries, as the case may be).

J. Consulates and Local Authorities in the Receiving Country

The duties of a consul are confined to his consular district. According to the Soviet Consular Statute of 1926, a Soviet consul has the right to communicate with all domestic authorities of his consular district within the scope of his functions and responsibilities, which may vary from country to country depending upon the provisions of the treaties in force.

Two types of agreements come into play in this connection. One is the consular convention by which the scope of consular activities is determined. The other consists of the trade, navigation and commercial agreements and those concerning legal aid, by all of which consular functions may be regulated. The commercial and legal aid agreements are dealt with in the chapter on treaties.

In the formative years of the Soviet regime following the formation of the Union with its exclusive right to represent the USSR in international relations, the Union government sought to restrict the relations of local authorities with foreign consulates. As government centralization progressed, foreign trade relations became a state monopoly, and the scope of contacts of foreign consulates with the local population and authorities shrank. In the Statute of 1966 the emphasis was placed upon the duty of local authorities to assure protection of foreign consulates, to respect their privileges and exemptions, and to assure their freedom to communicate with their superior authorities and with other consular establishments of the sending country, both in the Soviet Union and abroad.

Soviet consular conventions are more explicit as regards the right to communicate with local authorities and participate in the legal processes initiated by them. According to the Soviet-West German Consular Treaty (article 17):

“1. In the performance of his official duties, a consul may apply to the competent local authorities of his consular district and may make representations to them concerning violations of the rights and interests of his state and its citizens and of legal entities which have their head offices in the sending state and are constituted in accordance with its laws.

“2. If the consul's representations are not taken into account, or if it proves to be the case that authorities outside the consular district are concerned in the matter, the question shall be settled through diplomatic channels.”

The U.S.-Soviet Consular convention states: “A consular officer shall be entitled within his consular district to perform the following functions, and for this purpose he may apply orally or in writing to the competent authorities of the consular district.”

The Soviet-Japanese convention gives a consular officer of the sending

state the right to "apply to and correspond with the competent authorities (including local agencies of the central government departments) within the consular district." In addition he may perform his duties outside his district "with the consent of the authorities of the receiving state," which, depending upon the nature of those duties, may also entail communication with local authorities outside his consular district.

K. The 1966 Statute on Consular Immunities and Privileges

The status of foreign consuls is described in the 1966 Statute with reference to two types of immunities: those granted unconditionally, and those granted on the basis of reciprocity. In addition to those two classes of exemptions and privileges the statute provides that countries concerned may agree to grant to their consuls and consulates privileges normally granted to members of diplomatic missions.

1. Unconditional Immunities

Unconditionally guaranteed are inviolability of archives and of the official correspondence of the consular mission.

Consular officials, including the head of the consular mission, are granted personal inviolability. They are not subject to arrest or detention, unless charged with a serious crime, or in execution of a final court conviction. Consular officers of all ranks are exempt from criminal, civil and administrative jurisdiction of the USSR and of the Union republics as far as their official activities are concerned, but this does not extend to responsibility for claims for damages resulting from road and travel accidents.

Members of consular missions including technical and administrative personnel, are obliged to testify in court, except as regards matters touching upon performance of their official duties. However, in case of refusal they are not subject to enforcement measures.

The mission may display the flag and the coat-of-arms of the sending country. The national flag of the sending country may be displayed on the residence of the head of the consular mission and on his means of transport while being used on official occasions.

Consular missions have a right to unhampered communication with their governments, with the diplomatic missions in the USSR and with other consular and diplomatic missions. Consuls may communicate by mail, wire, cipher, and/or diplomatic pouch. Wireless stations may be established only with the consent of the Soviet government.

2. Immunities Granted under Condition of Reciprocity

Immunities granted under reciprocal conditions include freedom from taxation of the premises occupied by the mission and by the head of the mission. Freedom from customs duties for mission personnel also falls into this category.

Premises occupied by consular missions in the Soviet Union as well as the residences of the heads of the missions are exempt from local jurisdiction. Entry and enforcement are permitted only on request or with the agreement of the head of the consular or diplomatic mission concerned.

Tax immunity extends to consular mission personnel. It applies to all categories of consular officers (including the head of the mission), employees (administrative and technical, and servants), and members of their families, provided they are not Soviet citizens or are not permanent residents in the Soviet Union. Tax exemption extends to all types of income, and all types of taxes, national, local and personal service. However, servants of consular missions are exempt only as regards their wages and salaries.

Exemptions from customs duties for consular personnel of all categories are identical with those extended to members of diplomatic missions, provided, however, that they are reciprocally granted to Soviet consular personnel in the sending country.

Despite these similarities, consular privileges and immunities vary considerable from those of diplomats. In the first place, immunity from criminal, civil and administrative jurisdiction extends only to acts in an official capacity. Consuls and consular officials can be arrested and brought to court in criminal and civil matters not connected with their official functions. And in addition, they are liable for damages resulting from the use of motor transport, even on official occasions.

As compared with the 1927 Statute, the 1966 law has introduced a subtle improvement. The older Statute of Foreign Consular Missions in the USSR accorded to "Consular officers of foreign states . . . all the rights and privileges accorded them by the rules of international law." The 1966 law accorded members of diplomatic and consular missions in the USSR privileges and immunities so as to enable them to perform their functions determined in accordance with international law.

Following the enactment of the 1966 Statute, *Izvestia* carried an article which hailed the new law as a measure designed to foster international cooperation in connection with the fact that Moscow has become an important center for international diplomatic activity. In 1927 (the date of the old statute), the article stated, the USSR maintained diplomatic relations with twenty states. Now it is a host to ninety foreign diplomatic missions. Moscow is the seat of a number of international organizations, and there are seven consulates from foreign countries in the USSR.

The 1966 Statute is considerably improved compared with earlier Soviet legislative efforts in this respect. It also reflects a considerable degree of

stability in the treatment of foreign consulates in the Soviet Union, and a conviction that, owing to the position of the USSR in world affairs, its representatives, consuls and diplomats shall be treated with respect, and their status shall not be jeopardized.

Furthermore, the 1966 law is much more complete; it deals with immunity from jurisdiction of consular officers and employees in civil matters, their duty to testify in courts, and the taking of enforcement measures against them. Similarly the Statute of 1966 accords a consular mission the right to communicate with its diplomatic mission by means of the diplomatic pouch.

a. Privileges and Immunities in Soviet Consular Conventions with Other States

Formulations of the privileges and immunities accorded foreign consuls and consular missions in international conventions to which the Soviet Union is a party differ only in detail from the provisions of the 1966 Statute.

Thus, article 4 of the interwar Convention with Poland (replaced by the 1958 convention) provides that a consul may not be held without bail, or arrested either by administrative order or by order of a court, except when he is charged with offenses enumerated in the criminal codes of the contracting states. In such a case the diplomatic representatives must be informed immediately. When convicted of a crime for which he may not be arrested under the Convention, the government of the sending country must recall the offending consul if requested to do so by the government of the receiving country.

The 1925 Consular Treaty with Germany provides that a consul may be arrested by court order or as a preventive measure on condition that his diplomatic representative is informed before the arrest. In contrast with these two treaties, the Afghanistan Treaty of 1921 granted diplomatic immunity to consuls of both countries, including total exemption from local jurisdiction.

The main principle of the post-World War II Soviet consular conventions is that in their official capacity consular officers and consular employees are outside the jurisdiction of the receiving country.

As to other acts, consular employees are in a privileged position as compared with private individuals. As the Soviet-German Consular Treaty of 1958 stated:

"In respect to other acts, the consul and consular officers shall not be subject to arrest or to any other restriction of their freedom in the territory of the receiving state, except for the purpose of execution of a final judicial sentence, or of prosecution in respect of an offense against life or personal freedom, where the offender is caught *flagrante delicto*. In all cases, the embassy of the sending state must be informed of the impending arrest of the consular officer, or of the institution of the judicial investigation against him, and must be immediately informed of the detention of such an officer."

Corresponding provisions in consular agreements with socialist countries

generally are far more laconic. They provide that consuls and consular officers of the sending country are not subject to the jurisdiction of the receiving country for acts performed in their official capacity.

The Polish convention is an exception to the general rule. The Polish convention (article 11) provided:

“The consuls and consular employees who are citizens of the sending state shall not be subject to the jurisdiction of the receiving state in respect to acts performed in their official capacity. However, should a consul perform an act not in his official capacity which is punishable under the laws of the receiving state, the question of proceeding against him in any manner whatsoever shall in every case be agreed beforehand between the two contracting parties.”

The Chinese convention which can be taken as typical is much more laconic. Article 5 (2) provides that “The consuls shall enjoy the privileges and exemptions provided under this agreement and under the laws of the receiving country.”

This general clause is followed by article 6 which states simply:

“Consuls of the contracting parties shall not be subject to the jurisdiction of the receiving state in respect to the performance of their official duties.”

The wording of socialist consular conventions suggests that, on the whole, consuls and consular officers are subject to arrest and detention, and the receiving state may prosecute them for offenses not connected with their official acts in a manner not different from that applicable to private persons.

The only exception in this regard is the formula used in the Polish Consular Convention, which requires that a “proceeding against him in any manner whatsoever” must be agreed to by both parties. This would seem to rule out arrest, detention, and prosecution, without formal waiving of the personal immunity by a higher authority of the consul involved, and may well be a reflection of the earlier consular convention between Poland and the Soviet Union. Does this exclude detention *flagrante delicto*? The text of article 11 (a) which prohibits proceeding against a consul in any manner whatsoever would indicate that this is indeed the case.

The German Consular Treaty article 15 contains a provision reminiscent of earlier consular agreements, which is absent from all other post-World War II consular agreements, namely, that “Consular staff members who are not citizens of the receiving state shall not be permitted to engage in other than consular activities in that state.”

All consular conventions of the post-World War II period guarantee the inviolability of the offices of consular missions. They further stipulate that they are inaccessible to the authorities of the receiving state except on invitation or authorization of the higher authority.

The Polish Consular Convention of 1958 adds that the authorities of the receiving state shall not use force, in any form whatsoever, in such offices or in the residence of the consul. It also stipulates that offices of the consulate shall be separate from the living quarters of the consular employees (article 8).

Furthermore, conventions and consular agreements of the post-World War II period stipulate that archives and correspondence of the consular establishments are also inviolable. The Polish Consular Convention, again more specific than other documents of the same type and period, provides in article 9:

"1. The archives of the consulate shall be inviolable. The authorities of the receiving state may not examine or detain them.

"2. The archives of the consulate shall be kept separate from the private documents of the consular employees."

Article 10, point 2, of the Polish convention also provides that correspondence which is sent or received by a consulate shall be inviolable. "The authorities of the receiving state may not examine or detain it." (See in this respect the almost identical provisions of the West German Treaty of 1958).

The Austrian convention of 1959 provided in article 13: "The official correspondence of consulates, regardless of the means of communication employed, shall be inviolable and shall not be subjected to examination."

An important aspect of consular activities in the receiving state is the freedom of the consular missions to communicate with the authorities of the sending state, both within the receiving state and in the sending state. All consular conventions of the post-war period provide that the consul shall be entitled to use codes and the diplomatic pouch. Consuls shall be charged the same rates as diplomatic representatives for the use of ordinary means of communication (post, telegraph, telephone, radio).

The guaranteed secrecy of official correspondence seems also to cover official communications addressed to private persons. On several occasions, however, the Soviet press has published correspondence from the West German Embassy and the West German Consulate General addressed to private persons residing in the Soviet Union. It would be fair, therefore, to surmise that this guarantee of the secrecy of correspondence is not taken too seriously and that Soviet censorship, which is a fact of public life in the Soviet Union, is not hamstrung by the provisions of the consular agreements with other countries. The significant fact in this situation is that although the Soviet government has accepted obligations to respect the privacy of consular correspondence, this does not prevent the Soviet press (which is the government press) from using the content of such correspondence to advance the cause of governmental policies.

The U.S.-Soviet Consular Convention of 1964 represents perhaps the most concise and complete statement of the immunities and privileges affecting the status of American and Soviet consulates and consular officers in the Soviet Union and in the United States. Article 17 reads:

"The consular archives shall be inviolable at all times and wherever they may be. Unofficial papers shall not be kept in the consular archives.

"Buildings or parts of buildings and the land ancillary thereto, used for the purposes of the consular establishment and the residence of the head of the consular establishment, shall be inviolable.

"The police and other authorities of the receiving state may not enter the building or that part of the building which is used for the purposes of the consular establishment, or the residence of the head of the consular establishment, without the consent of the head thereof, persons appointed by him, or the head of the diplomatic mission of the sending state."

Not all consular conventions contain the concept of exemption from local jurisdiction that the convention with the United States does. At the same time, the 1966 Statute seems to offer a similar extension of exemption from local jurisdiction to all other countries maintaining consulates in the Soviet Union, even when their conventions do not provide it, of course under condition of reciprocity.

Soviet consular law, in internal legislation (Statute of 1966) as well as in conventions with other countries, tends to extend under condition of reciprocity similar immunities to the offices of consular missions and to the residence of the head of the consular mission. Consular premises are as a rule inviolable and an express invitation is needed to make the entry of local authority legal.

In the *Kasenkina* case (involving the kidnapping and attempted suicide of a Soviet teacher Mrs. Kasenkina) which took place in 1948 under the 1927 Statute, the New York police entered the Soviet Consulate General on the invitation of the head of the consulate to investigate her attempt to commit suicide. The Soviet government protested this action as violating international law.¹⁶³ The American government rejected the protest. In its note the Department of State stated:

"The Department is informed that after Mrs. Kasenkina had jumped from a window of the Consulate General on August 12, Consul General Lomakin agreed with the suggestion of police officers that they inspect Mrs. Kasenkina's room, as well as the room from which she jumped. This inspection was carried out in the presence of the Consul General. In view of these circumstances, the Department of State considers the action of the New York police authorities entirely proper."¹⁶⁴

Dwellings of consular officers and of the other members of the consular staff are not covered by a similar immunity. A difference in treatment of the consul and of the consular staff is also visible in the duty to testify in courts. Members of the consular staff and technical personnel cannot be called to testify as to any matter connected with their official duties. Otherwise, both the consul and members of the consular staff have the duty to testify in court. However, the head of the consular mission is in a somewhat more privileged position. In case he is prevented by his official duties, by illness or for other reasons from appearing before the court, he shall so inform the court and, shall make a deposition in writing. The Austrian convention provides that in such a case he may make the deposition in his office or his residence.

According to article 12 of the Soviet-Polish Convention:

"1. Consuls and consular employees may be summoned to give testimony in either a civil or criminal case. The summons shall be in the form of an official letter and shall make no reference to the possibility of proceedings

of any kind in the event of failure to appear. The court or authority requiring the testimony of the persons aforesaid shall take all necessary steps to avoid interference with their official duties.

"2. Consuls and consular employees may refuse to give testimony before courts or authorities of the receiving state concerning matters connected with their official duties and may also refuse to produce official correspondence and documents. If the court or authority of the receiving state considers the refusal unjustified, the matter shall be turned over for settlement through diplomatic channels.

"3. A consul may, for cogent reasons, connected with his official duties or on grounds of illness, request that his testimony should be taken at another time, either in the offices of the consulate or at his residence."

In Soviet consular agreements, the status of a member of the family of a consul or of a consular staff members is that of a private citizen. The only exception in this respect is provided for in article 13 of the Soviet-Polish Consular Convention: "Consuls and consular employees and their spouses and minor children residing with them who are citizens of the sending state shall not be subject to the regulations of the receiving state with regard to registration, residence permits and visas applicable to foreigners."

Tax immunities and exemptions fall into three categories. Consular conventions of the Soviet Union with other states exempt from all taxes immovable property of the sending state which is intended for the official purposes of the consulate or for the living quarters of the consul and the consular employees. According to the Polish consular agreements, "motor vehicles, launches and other means of conveyance, radio and television receivers and any other movable property owned by the sending state and serving the needs of the consulate shall be exempt from all taxes and fees."

Tax exemptions applying to immovable property used for consular offices and for living quarters do not apply to fees and rates for public utilities. As the Austrian convention stated: "This exemption shall not apply to payment for special services rendered by public corporations or enterprises." In contrast to all other Soviet consular agreements, the Polish convention exempts the consulates of the two countries from the payment of fees to the governmental broadcasting companies for the use of television and radio receivers.

Conventions with West Germany and Austria introduced the concept of the most favored nation as regards tax exemptions. Article 10 of the West German convention stipulates:

"1. Consular staff members who are citizens of the sending state shall be exempt in the receiving state from all taxes on remuneration received by them in their capacity as consular staff.

"2. In addition to the exemption provided for in paragraph 1 above, consular staff members who are citizens of the sending state shall, subject to reciprocity, be exempt from taxes in the receiving state to the same extent as consular staff of any third state."

Other consular conventions of the post-World War II period accord this exemption unconditionally. As article 8 of the Consular Convention with Vietnam stated: "Consuls, consular officers and consular employees and their spouses and minor children who are not citizens of the receiving country shall be exempt from all forms of personal service and from direct taxes imposed on citizens of the receiving country." One form of personal service is military duty, and the West German convention, which is more specific in this respect, provides:

"1. Consular staff members and their spouses and minor children residing with them shall, provided they are citizens of the sending state, be exempt in the receiving state from liability to military and other personal or material service.

"2. Land and buildings shall be exempt from military and other contributions only if they are used as official premises or living quarters by consular staff who are citizens of the sending state."

The Consular Convention with Czechoslovakia provides:

"Consuls and consular employees who are citizens of the sending state shall be exempt in the receiving state from all forms of direct taxes and personal services.

"The said persons shall be exempt from military obligations of a material nature, such as services, requisitions and billeting, in so far as concerns immovable or movable property or vehicles in official or private use."

Exemption from customs duties applies to all objects used by the mission for official purposes. The West German convention stipulates that "Articles intended for the official use of the consulate, including motor vehicles, shall be exempt from customs duties and other charges on imports in the same manner as articles intended for the official use of the embassy of the sending state." The convention with Poland specified only that objects used for official purposes are free from all taxes and fees. The conventions with Czechoslovakia (article 10) and with North Korea state: "Articles intended for the official needs of a consulate shall be exempt from customs duties and all other charges." Consular conventions with other countries are silent regarding the exemption from customs of such objects. At the same time, consular conventions provide for an exemption from customs duties of the consular staff and their families under condition that they are citizens of the sending state and on condition of reciprocity. It may be presumed, therefore, that this would apply with greater force to objects imported for the official use of the consular mission.

NOTES

¹ *Ved.*, 1944, no. 8.

² *SU*, 1917, no. 1/1.

³ *Dok.*, 1, 109-11.

⁴ Taracouzio, *The Soviet Union and International Law* (1935) 166-67.

⁵ *Ibid.*

⁶ Law of Feb. 1, 1944, *Ved.*, 1944, no. 8.

⁷ *Ved.*, 1938, no. 11.

⁸ Resolution of the VCIK of May 21, 1925, *SZ*, 1925, no. 35.

⁹ Resolution of the VCIK of May 22, 1925, *SZ*, 1925, no. 9.

¹⁰ *Ved.*, 1946, no. 10.

¹¹ *SZ*, 1925, no. 34, and 1927, no. 25.

¹² Taracouzio, *supra* note 4, at 166-67.

¹³ Decree of May 28, 1943, *Ved.*, 1943, no. 22.

¹⁴ Resolution of the VCIK of May 22, 1925, *SZ*, 1925, no. 34.

¹⁵ Article 13 of the Statute of the People's Commissariat for Foreign Affairs of Nov. 12, 1923, provided:

"Representatives plenipotentiary of the USSR accredited with foreign governments, as well as heads and members of the delegations appointed for the negotiation of international agreements requiring ratification are appointed and recalled by the Central Executive Committee of the USSR, or its Presidium.

Letters of accreditation and recall of the representatives plenipotentiary of the USSR and the full powers for the heads and members of the delegations for the negotiation of international agreements requiring ratification are issued under the signature of the Chairman and the Secretary of the Central Executive Committee with the counter-signature of the People's Commissar for Foreign Affairs."

According to the same Statute, full powers for the heads and members of missions and delegations and diplomatic representatives appointed by the Council of Ministers are issued under the signature of the Chairman of the Council and countersigned by the Minister for Foreign Affairs.

¹⁶ *Ved.*, 1923, no. 10.

¹⁷ Grzybowski, *Soviet Private International Law* 72 ff. (1965).

¹⁸ *Dok.*, 1, 41.

¹⁹ *Id.* at 43.

²⁰ *Id.* at 82.

²¹ *Id.* at 89.

²² *Id.* at 407.

²³ *Id.* at 103.

²⁴ *Ibid.*

²⁵ *Id.*, 2, 97.

²⁶ *Id.*, 1, 468.

²⁷ *Id.*, 2, 97 ff.

²⁸ *Id.* at 197, 293.

²⁹ *Id.*, 1, 386.

³⁰ *Id.*, 3, 69.

³¹ *Id.* at 80.

³² *Id.* at 90.

³³ *Id.* at 141.

³⁴ *Id.* at 207.

³⁵ *Id.*, 4, 220-21.

³⁶ Nov. 7, 1921, *id.* at 484.

³⁷ *Dok.*, 1, 371.

³⁸ *Id.* at 580.

³⁹ *Id.* at 607, 610.

⁴⁰ *VPSS*, 1, 397.

⁴¹ *Id.*, 2, 137.

⁴² *SURSFSR*, 1917/18, no. 39.

⁴³ Taracouzio, *op. cit. supra*, note 4, at 165-66.

⁴⁴ *Id.* at 166-67.

⁴⁵ *Ibid.*

⁴⁶ *SZ*, 1924, no. 26.

- ⁴⁷ Fedorov, *Diplomar i Konsul Izd. Mezhdunarodnoe Otnoshenia* (1965).
- ⁴⁸ *Dok.*, 4, 620, 667.
- ⁴⁹ *Mezhdunarodnoe pravo* (1951) 332-33; see also 2 *Mezhdunarodnoe pravo v izbrannykh dokumentakh* 5.
- ⁵⁰ *Izvestia*, Dec. 25, 1928.
- ⁵¹ *Ved.*, 1941, no. 21.
- ⁵² May 28, 1943, *Ved.*, 1943, no. 22.
- ⁵³ Korolenko, *Torgovye dogovory i soglashenia SSSR s innostrannymi gosudarstvami* (1953) 11-17.
- ⁵⁴ Kaluzhnaia, G. P., *Pravovye formy monopolii vneshnei torgovli SSSR v ikh istoricheskom razvitii* (1964) 49; see also Frenzke, "Die Rechtsstellung der sowjetischen Handelsvertretungen nach der Vertragspraxis der UdSSR," 9 *Osteuropa Recht* (1963) 269-300.
- ⁵⁵ Frenzke, *id.* at 270.
- ⁵⁶ *SDD*, 7, 70.
- ⁵⁷ *Id.*, 8, 590.
- ⁵⁸ *Dok.*, 8, 510-12.
- ⁵⁹ *Ved.*, 1959, no. 22.
- ⁶⁰ *SZ*, 1933, no. 59.
- ⁶¹ Cf. Grzybowski, *op. cit. supra* note 17, at 37 ff.
- ⁶² *SZ*, 1925, no. 34, and 1927, no. 25.
- ⁶³ Taracouzio, *op. cit. supra* note 4, at 166.
- ⁶⁴ *SZ*, 1927, no. 5/48.
- ⁶⁵ *Ved.*, 1956, no. 12.
- ⁶⁶ *Id.* 1966, no. 22/387.
- ⁶⁷ *SDD*, 1-2, 10.
- ⁶⁸ Feb. 26, 1921, *id.* at 107.
- ⁶⁹ May 31, 1924.
- ⁷⁰ June 1, 1921, *SDD*, 4, 150.
- ⁷¹ *Id.* at 257.
- ⁷² *Id.* at 273.
- ⁷³ *Id.*, 3, 607, Agreement of March 16, 1921.
- ⁷⁴ January 11, 1919, *Dok.*, 2, 23.
- ⁷⁵ *Pravda, Izvestia*, Feb. 12, 1953.
- ⁷⁶ *Pravda, Izvestia*, July 21, 1953.
- ⁷⁷ *N.Y.*, June 11, 1967.
- ⁷⁸ *Pravda, Izvestia*, March 21, 1952.
- ⁷⁹ *Pravda*, Dec. 17, 1964.
- ⁸⁰ *Pravda, Izvestia*, May 25, 1949.
- ⁸¹ *Dok.*, 5, 274.
- ⁸² *Pravda, Izvestia*, Nov. 19, 1949.
- ⁸³ *Pravda, Izvestia*, Aug. 11, 1960.
- ⁸⁴ Rousseau, 65 *RGDIP* 620 (1961).
- ⁸⁵ *Izvestia*, Dec. 16, 1964.
- ⁸⁶ *Pravda, Izvestia*, Oct. 7, 1964.
- ⁸⁷ *Pravda*, July 20, 1965.
- ⁸⁸ *Izvestia*, May 12, 1965.
- ⁸⁹ *SZ.*, 1927, no. 5.
- ⁹⁰ *Dok.*, 1, 512.
- ⁹¹ *Id.* at 560.
- ⁹² *Id.*, 6, 273.
- ⁹³ See *infra*.
- ⁹⁴ Grzybowski, *op. cit. supra* note 17, at 111 ff.
- ⁹⁵ *Id.* at 37 and *passim*.
- ⁹⁶ *Id.* at 37-38; Frenzke, "Prozessuale Immunitäten der Sowjetischen Handelsver-

tretungen nach den zwischenstaatlichen Verträgen," 10 *Osteuropa Recht* 237-57 (1964); cf. Lunts, *Mezhdunarodnoe chastnoe pravo osobennaia chast* (1963) 66.

⁹⁷ Art. 4, para. 2, *SZ*, 1933, no. 59.

⁹⁸ Grzybowski, *op. cit. supra* note 17, at 72 ff.

The general practice of European courts is not to recognize the defense of sovereign immunity and to assert jurisdiction as regards civil relations and private property rights of the sovereign states. Italian, French and Belgian courts, in particular, have accepted their jurisdiction in matters arising out of commercial activity; Niboyet, "Les immunités de juridiction en droit français, des Etats Etrangers engagés dans les transactions privées," *RGDIP* 525 (1933). See also Brussels Convention of April 11, 1926, amended May 24, 1934, regarding state owned merchant shipping.

Rahimtoola v. Nizam of Hyderabad, [1958] *A.C.* 379: "If the dispute brings into question, for instance, the legislative or international transactions of a foreign government, or the policy of its executive, the court should grant immunity if asked to do so, because it does offend the dignity of a foreign sovereign to have the merits of such a dispute canvassed in the domestic courts of another country; but if the dispute concerns, for instance, the commercial transactions of a foreign government (whether carried by its own departments or agencies by setting up separate legal entities), and if it arises properly within the territorial jurisdiction of our courts, there is no ground for granting immunity." [*Id.* at 422.]

⁹⁹ Pereterskii-Krylov, *Mezhdunarodnoe chastnoe pravo* (1950) 206; Lisovskii, *Torgovyie predstavitelstva Soiuz SSSR za granitsei* (1947) 86.

¹⁰⁰ Frenzke, *supra* note 96, at 253-54; Grzybowski, *op. cit. supra* note 17, at 72 ff.

¹⁰¹ 19 *Dep't of State Bulletin* (1948) 525.

¹⁰² *Ibid.*

¹⁰³ 26 *id.* 451-52 (1952).

¹⁰⁴ *Ibid.*

¹⁰⁵ 37 *id.* 119 (1957).

¹⁰⁶ *Id.* at 234.

¹⁰⁷ *Statutory Instruments* 1956, no. 84, at 683-84 (1956).

¹⁰⁸ *Id.* at 685.

¹⁰⁹ Tunkin, "Nekotorye novye iavlenia v posolskom prave," *Mezhd. Zyzn.*, no. 12, at 70 (1957).

¹¹⁰ 22 *Dep't of State Bulletin* 561 (1950).

¹¹¹ *Izvestia, Pravda*, May 25, 1949.

¹¹² *Dok.*, 1, 109.

¹¹³ Taracouzio, *op. cit. supra* note 4, at 207.

¹¹⁴ *Ibid.*

¹¹⁵ *id.* at 210-11.

¹¹⁶ *SZ*, 1926, no. 10/78.

¹¹⁷ *Dok.*, 7, 156, 270.

¹¹⁸ *SU RSFSR*, 1921, 397-98.

¹¹⁹ See *supra*.

¹²⁰ *SZ*, 1927, no. 5.

¹²¹ *Ved.*, 1966, no. 22/387.

¹²² *SDD*, 2, 38 ff.

¹²³ *Id.*, 3, 19 ff.

¹²⁴ *Id.*, 4, 35 ff.

¹²⁵ *Id.*, 9, 89-99.

¹²⁶ *Id.*, 1, 40 ff.

¹²⁷ *Id.*, 2, 41.

¹²⁸ *Id.*, at 28 ff.

¹²⁹ *Id.*, 3, 61 ff.

¹³⁰ *Id.*, 20, 139.

¹³¹ *Id.*, at 147.

- ¹³² *Id.* at 155.
- ¹³³ *Id.* at 163.
- ¹³⁴ *Id.* at 170.
- ¹³⁵ *Id.* at 172.
- ¹³⁶ *Id.* at 187.
- ¹³⁷ *Id.* at 196.
- ¹³⁸ *Ved.*, 1957, no. 11/529.
- ¹³⁹ *Id.*, 1959, no. 50/272.
- ¹⁴⁰ *Id.*, no. 21/276.
- ¹⁴¹ *Id.*, 1961, no. 33/346.
- ¹⁴² *Id.*, 1959, no. 17/101.
- ¹⁴³ *Id.*, 1960, no. 2/5.
- ¹⁴⁴ 50 *Dep't of State Bulletin*, no. 1304, at 979-85.
- ¹⁴⁵ CMD 2910, no. 1 (1966).
- ¹⁴⁶ Ratified March 16, 1967.
- ¹⁴⁷ *Ved.* (1968) no. 37.
- ¹⁴⁹ Cf. art. XI, para. 3, of the Japanese Convention.
- ¹⁵⁰ Cf. *infra*.
- ¹⁵¹ Agreement of Nov. 15, 1937, *Calendar* 119 (1958).
- ¹⁵² *Documents on Soviet-Polish Relations 1939-1945*, at 89 (1961).
- ¹⁵³ III (1933-41) Degras, ed., *Soviet Documents on Foreign Policy 269-70* (1953); Lee, Consular Law and Practice 191-92 (1961).
- ¹⁵⁴ Lee, *id.* at 42.
- ¹⁵⁵ *NYT*, Apr. 7, 1949.
- ¹⁵⁶ *NYT*, Apr. 14, 1949, and Apr. 18, 1949.
- ¹⁵⁷ *NYT*, May 30, 1949.
- ¹⁵⁸ *NYT*, Mar. 31, 1951.
- ¹⁵⁹ *Izvestia*, May 29, 1966.
- ¹⁶⁰ See Lee note 153, at 59 ff.
- ¹⁶¹ Cf. art. 27 of the Consular Convention with Poland of 1958.
- ¹⁶² Art. 18, Statute on Consular Service of 1926.
- ¹⁶³ 19 *Dep't of State Bulletin* 253-55, 408(1948); see also Preuss, "Consular Immunities: The Kasenkina Case," 43 *AJIL* 46 (1949).
- ¹⁶⁴ Note of Aug. 19, 1948, 19 *Dep't of State Bulletin* 253 (1948).

Chapter VI

INTERNATIONAL ORGANIZATIONS AND THE SOVIET UNION

I. SOVIET UNION IN INTERNATIONAL ORGANIZATIONS OF CAPITALIST STATES

A. *Interwar Years*

The Third Program of the Communist Party of the Soviet Union adopted in 1961 acknowledged that both international organizations of the capitalist as well as of the socialist systems had fundamentally an identical purpose. Their function was to bring about the closer international economic cooperation between various countries. Nevertheless, international organizations of the capitalist system were unable to achieve this purpose:

"The basic contradiction of the contemporary world, that between socialism and imperialism, does not eliminate the deep contradictions rending the capitalist world. The aggressive military blocks founded under the aegis of the USA are time and again faced with crises. The international state monopoly organizations springing up under the motto of "integration," the mitigation of the market problems, are in reality new forms of the redivision of the world capitalist market and are becoming seats of acute strain and conflict."

By way of contrast, the Program stated:

"The world socialist system is a new type of economic and political relationship between countries . . . The distinctive features of the relations existing between the countries of the socialist community are complete equality, mutual respect for independence and sovereignty and fraternal mutual assistance and cooperation."

"The establishment of the Union of Soviet Socialist Republics and later, of the world socialist system, is the commencement of the historical process of all-round association of the peoples. With the disappearance of class antagonism in the fraternal family of socialist countries, national antagonisms also disappear."

This stereotype distinction between various economic and political organizations on the international level, viz. as being dependent upon their class content, is hardly consistent with reality. It is true that there are some international organizations that aim at the economic integration of a number of countries and which may be characterized as serving primarily the needs

of the economic integration of the capitalist or socialist countries depending upon the economic order their members represent. It is also true that a great number of international organizations established to promote cooperation between various countries have, as their members, both socialist and capitalist countries. The Soviet Union and other socialist countries have found it useful to belong to various international economic and political organizations, and from this perspective statements of the Third Program of the Communist Party of the Soviet Union may be regarded as ideological relics more characteristic of the early years of the Soviet regime. At the present time the Soviet attitude toward international organizations, both general and socialist, is determined by very complex principles and interests.

Originally the attitude of the Soviet regime with regard to all forms of political cooperation with the Western world was that of disengagement. At the time of the October Revolution Russia, one of the great European powers, was on the brink of a military disaster because of her involvement in the war. The defeat of the imperial army destroyed its discipline and created conditions for the revolution. The new regime was painfully aware that in order to survive and to save the country from foreign conquest and political disintegration it had to change drastically the situation. It was therefore imperative that Russia be extricated from the war.

The disengagement policy remained for a long time the guiding line of Soviet foreign policy. Its main idea was that the socialist state was, by its very nature, free from those entanglements which resulted from the struggle and ambitions of the imperialist powers: Soviet policy was such that it could not be affected by the conflicts and internal contradictions of the world economic and political order.

Despite adherence to this principle, as time went on the Russian government was forced to modify somewhat its position as regards the binding force of acts of the previous Russian government. In an exchange of notes with the British government,¹ and later on various occasions, the Soviet government either confirmed the validity of a number of earlier agreements, or withdrew its basic opposition to being bound by tsarist treaties. Either by governmental proclamation, by reference in new laws, or official accessions, and even indirectly by publishing the texts of treaties in force, a number of international agreements pre-dating the revolution were recognized as having remained in force.² In particular, the Soviet regime found it useful to continue its cooperation with other countries within the framework of various technical and specialized organizations.

During the nineteen twenties, the Soviet Union slowly built up its membership and participation in already established international organizations. This included various technical arrangements. The Soviet Union became a party to the International Metric Union, International Telegraph Union, International Convention Concerning Protection of Underwater Telegraph Cables, Convention Concerning Establishment of an International Union for the Publication of Customs Tariffs, Convention Concerning Establish-

ment of a Permanent International Agricultural Institute, International Office for Public Health, International Agreement for the Creation of an International Office Dealing with Contagious Diseases of Animals, Universal Postal Convention, Convention for the Creation in Paris of an International Office of Chemistry, Convention for the Unification of Certain Rules of International Air Traffic, and so on.

While the Soviet Union sought to cooperate in technical organizations, it refused to be involved in political schemes for the preservation of peace. It remained a partisan of the doctrine of political disengagement, which, its leaders believed, had saved the revolution. Not invited to become a member of the League of Nations, the Soviet government maintained an attitude of criticism and disapproval of the regime for the preservation of peace established under League's auspices.

A subtle change in Soviet policy occurred in the late twenties, when the Soviet Union decided to join the General Treaty for the Renunciation of War as an Instrument of National Policy (Kellogg-Briand Pact—Treaty of Paris) of August 27, 1928. This was a first demonstration of Soviet active interest in some form of collective security. The 1928 Treaty was followed by three regional agreements connected with its provisions. On February 9, 1929, the Soviet Union signed a Protocol concerning the entry into force of the Paris Treaty for the Renunciation of War (Litvinov Protocol) with Danzig, Poland, Estonia, Latvia, Lithuania, Persia, and Romania. On July 3, 1933, the Soviet Union concluded a convention on the definition of aggression with Afghanistan, Estonia, Finland, Latvia, Persia, Poland, Romania, and Turkey, and the next day a similar convention with Czechoslovakia, Turkey, and Yugoslavia was signed.

The new policy which slowly took shape in the late twenties and early thirties was largely due to the growing change in the political climate in Europe. While initially the Soviet Union could maintain a posture of neutrality in a world which faced no real danger of major conflagration, the emergence of the dictatorial regimes in Italy and Germany, and the growing might of the Japanese Empire and its conquests on the Asian mainland made the Soviet Union vitally interested in the preservation of the status quo and in preventing wars. Soviet leaders saw themselves slowly becoming the main targets of political propaganda campaigns. In those circumstances the Soviet Union was forced to abandon its policy of isolation, and to seek contact and cooperation with the forces of international political stability.

In 1933, in a move to strengthen its position, Soviet intransigence as regards noncompensation for the nationalization of foreign property was abandoned. The actual concession was not important and involved no financial outlay on the part of the Soviet Union. In November 15, 1933, the Soviet government concluded a Gentlemen's Agreement (Litvinov Assignment), with the United States concerning the settlement of the pre-Soviet Russian government debts to the United States. The following day the Soviet Union and the United States exchanged notes establishing diplomatic

relations between the two countries. In 1934 the Soviet Union joined the League of Nations and the International Labor Organization (ILO).

Soviet policy of active participation in various collective security schemes was closely associated with the person of Maxim Litvinov, who after long years in the Soviet foreign service finally reached the position of the foreign commissar of the Soviet Union. There seems to be no doubt that Litvinov himself was earnestly convinced that Soviet security could not be assured except by adhering to the policy of collective security. However, his position in the government and in the Party was not strong enough to commit the Soviet Union to this policy. Soviet entry into the League was understood as an act of political demonstration and a new line in the Soviet political tactics rather than a genuine change of heart. There was little evidence that the Soviet Union rendered more than lip service to the aims and goals of the League of Nations. At any rate its contribution to the prestige and power of the League could only delay (if at all) the process of disillusionment with the effectiveness of the great organization, which barely a dozen years earlier had been a source of hope for the world.

Similarly, Soviet representatives in the ILO did little to promote the work and the aims of the Organization. In spite of the fact that Soviet delegates participated in five of its annual sessions (19-23), the Soviet government did not accede at that time to a single convention or agreement of the ILO seeking to establish international standards of employment and improve world labor conditions. Some of the conventions prepared at that time and approved, also by the Soviet delegation at the ILO meetings, were ratified by the Soviet Union only after the death of Stalin. A Soviet manual describing Soviet participation in the work of the ILO suggested that Soviet delegates to the ILO used its sessions mainly to "expose willful lies concerning the position of Soviet labor and to inform the public of the great achievement of the socialist country."³

As time went on, Soviet leadership became convinced that the policy of collective security was not a realistic policy, committing an error of judgment similar to that made by the governments of the other great powers of Europe (eg. Munich Agreement of 1938). In March 1939 Litvinov was replaced by Molotov, who until that time had been the chairman of the Council of the People's Commissars. Stalin assumed direct responsibility for the government of Russia, taking in turn Molotov's position. The new leadership came to terms with Germany and became a party to the Ribbentrop-Molotov Pact (August 24, 1939). More than twenty years after Soviet leaders had successfully experimented with the policy of disengagement, the Soviet government again resorted to the same policy.

B. Soviet Participation in Universal International Organizations Since 1945

With the perspective of historical experience, the question which must be asked today is, what is the nature of the Soviet government participation in international programs involving technical cooperation with other countries, or in organizations seeking to guarantee peace and collective security in the world?

During the post-World War II period, the Soviet Union built up its membership in international organizations to the imposing number of some two hundred and forty associations concerned with activities of interest to more than one country. It is probable that in the entire world there is no other country with a government involved in so many international activities. In more traditional societies a good deal of international contact is left to private individuals and private associations. In the Soviet Union and other socialist states, activities of business and professional associations of scholars, artists, labor leaders, humanitarians, if they extend beyond national boundaries, are a matter of foreign relations and an area of government monopoly. Thus the Soviet government in its official capacity is represented in all types of international associations which, so far as other countries are concerned, are not inter-governmental organizations. These include organizations established for the promotion and advancement of international research and the exchange of information in the field of natural sciences, of humanities (history, Slavic studies), social studies (International Penal Law Association), cancer, rheumatism, shipbuilding and construction of roads and bridges, which although international in scope are "private" in nature. In addition the Soviet Union takes part in various organizations active in the field of trade and economic cooperation, international trade union activities, the International Red Cross Organization, and so on. Not all international organizations of which the Soviet Union is a member are international in the traditional sense. Yet, even with these modifications, Soviet membership in international organizations is quite impressive.

Soviet membership in inter-governmental organizations falls into three categories. The largest is the group of international associations set up to deal with concrete and mostly technical problems of international cooperation. They include railway transport, electric power and its transit, communications including wireless, protection of natural resources (North Pacific Fur Seal Commission, International Whaling Commission, North Pacific Fisheries Commission, and so on). In 1965 the Soviet Union ratified the 1883 Paris Convention on Protection of Industrial Property and became a member of the Patents Union.

The second category of Soviet international involvement represents those forms of collective activity which, broadly speaking, form the United Nations system of international organizations.

In addition to the UN, of which the Soviet Union is an original member, the Soviet Union is also a member of the International Labor Organization

(since 1954 also Ukraine and Byelorussia have joined ILO); the Economic and Social Council, Trusteeship Council, Bureau of Technical Assistance of the United Nations (the Soviet Union contributes financially to that organization since 1953); the Universal Postal Union, World Meteorological Organization, World Health Organization, UNESCO (since 1954), and the International Atomic Energy Agency.

The Soviet Union is not a member of the following technical organizations which are a part of the UN system: the International Bank for Reconstruction and Development; the International Monetary Fund; the International Finance Corporation; the Food and Agricultural Organization; the International Civil Aviation Organization; the Inter-Governmental Maritime Consultative Organization.

Soviet participation in various United Nations activities underwent a subtle change after the death of Stalin and the subsequent removal of Molotov. Soviet foreign policy became more active and more inclined towards compromise principles (e.g., Austria and Laos). The Soviet Union joined the UN Program of Technical Assistance for Underdeveloped Countries. The Soviet Union joined UNESCO; and its participation in the International Labor Organization ceased to be a purely nominal affair. Since 1954 the Soviet government began to take active part in ILO's efforts to establish uniform labor conditions in the world by ratifying some of the numerous international conventions prepared and voted for at ILO sessions.⁴

It must be clearly understood, however, that the Soviet Union did not become so amenable as to fully identify its policies with those of the United Nations. The change, however, signified a more positive approach to the work of the UN, and to cooperation with its programs, when it was in the Soviet Union's interest to do so.

C. Equality and Veto

In summarizing the history of the East-West cooperation within the framework of the United Nations it would not be unfair to state that absence of accord in practical cases is due to differences in some basic concepts between the socialist and the free economy countries. These differences have to do with the aims and goals of international cooperation, the role of the United Nations in our times, and the meaning of some basic concepts of international law. The end result of these differences is that the Soviet Union and its allies among the socialist countries are unable to agree to a common approach with the Western powers in situations in which ideological differences are involved. For example, they are opposed to efforts which are aimed at the stabilization of social and economic conditions. They see the purpose of economic assistance not in the strengthening of free institutions, but in the development of planned economy systems. In the Soviet view, economic cooperation and movement of capital should not be the business of individ-

ual initiative, but an instrument of national control of economic resources. National independence has a meaning in the socialist context which differs from that of traditionally western orientated systems.

These differences which frequently give occasion to Soviet use of veto power are the ultimate reason that a vast majority of UN members seek new ways and techniques to fulfill the basic aims and purposes of the United Nations Organization, which again is a source of irritation and conflict between the socialist and free economy countries.

It would not be true to state that the Soviet Union is insensitive to trends in world public opinion, and if it sees no possibility of making a concession to a point of view, it is so because of important reasons fundamental to its ideological position.

A good deal of the Soviet attitude to international cooperation with states of differing social orders is due to the feeling of isolation; the Soviet Union in particular, and the socialist states as a whole, have endured in a world where the free economy countries vastly outnumber the members of the Soviet bloc.

This sense of isolation was born at the time when the Soviet regime realized that the October revolution would not be followed by communist revolutions in other countries of Europe. As a result, any plan of political or economic cooperation with the outside world had to resolve the question of how to neutralize the capitalist majority in any situation in which it would have a bearing on conditions and circumstances of cooperation. Lenin's notes made on Chicherin's memorandum in connection with the departure of the Russian delegation to the Conference of Genoa (April-May, 1922), which came with full documentation ready to justify a total rejection of all plans for reconciliation, were almost exclusively concerned with this problem. In order that the Russian delegation might have some chance of success at the conference table which would draft plans of cooperation, Lenin insisted that the Conference should include participation on equal footing of colonial and dependent nations. The Conference should admit workers organizations, and accept a general principle of non-intervention of international organizations in the internal affairs of the member countries. Similarly, Lenin insisted on full equality and numerical parity of representation in all procedures concerned with the settlement of disputes between the socialist and capitalist nations. As regards international arbitration, Lenin thought that only such court of international arbitration which would consist of an "even number of members, delegated by both parties, so that half of the members would be imperialists and half communists,⁵ would be acceptable to the new Russian government."

The same concern with numbers manifested itself when it became obvious towards the end of the last World War that the Soviet Union would not be able to retain its position of isolation and would have to participate in the activities of the United Nations Organization. The formula for political action in the new world was unanimity and concerted action of all big

powers so conceived that the opposition of one would block all effective action. In his report to the Supreme Soviet on November 6, 1944, Stalin warned that the actions of the future international organization in safeguarding peace would only be effective if the great powers "shall act in the spirit of unanimity and agreement. They will not be effective if this basic premise is violated."⁶

The immediate post-war experiences in the conference room, where Soviet leaders were forced to sit and debate various political and legal problems, strengthened further their dislike of voting procedures. Diplomacy and negotiations had little to do with deciding questions by putting them to vote. Molotov, who was the chief Soviet delegate to the Paris Peace Conference of 1946, on several occasions complained bitterly against the voting technique. During the closing session of the Peace Conference, he denounced the "voting machine" which forced him to abandon many of his "just" claims. He indicated that the Soviet delegation favored the unanimity principle, which would in effect make it impossible to settle international questions at the expense of the weaker party. He warned of the dangers associated with the technique of decision by the majority vote:

"Veto prevents an agreement of three or four of the big powers to conspire against one of them. Veto promoted cooperation between the major powers, which is in the interest of all United Nations and of the entire world."⁷

He was convinced that the unanimity principle was superior to the majority vote. "The principle of veto requires that great powers must pay attention to their common interests . . . preventing the emergence of groupings or of blocs of states directed against other states, and making it difficult to intrigue with aggressors behind the backs and contrary to the interests of the peace loving nations."⁸

As socialist countries grew into a system of socialist states, the principle of the veto became a basic condition of cooperation between the two state systems. The Soviet right to veto any political decision made by the Security Council guarantees the equality and sovereign rights of the socialist states. It became thus a principle of peaceful coexistence within the United Nations Organization. Chairman Khrushchev stressed the wisdom of the founding fathers of the UN who "accorded equal rights to each of the great powers, members of the Security Council, including the Soviet Union, although at that time socialist countries were in an absolute minority. At that time only the Soviet Union and the Mongolian People's Republic were socialist states. Nevertheless, the Soviet Union was given the same rights as all other members of the Security Council." In his opinion the socialist states were given the same rights to influence the course of public affairs in the world as all capitalist states.¹⁰

Furthermore, the right of veto was a political necessity. As a Soviet jurist wrote:

"The Soviet Union could not but take into account that in the course of the pre-war years the policy of Western powers towards the Soviet Union was

reactionary and high-handed. It had to remember that anti-Soviet policy was the backbone of the foreign policy of the Western Powers . . . ”¹¹

In support of the Soviet government's position, Soviet jurists emerged with a number of legal doctrines, which have promoted the principle of unanimity of great powers in the Security Council, and of the institution of veto or the central principle of the decision making mechanism in the United Nations.

The 1957 edition of the Soviet treatise on international law prepared with the participation of the leading Soviet jurists expressed the view that:

“The negative vote of a permanent member (of the Security Council) means that the decision was rejected. If the permanent member decided to refrain from voting, indicating that this should not be considered as a negative vote . . . the Council has the right to adopt the decision. Absence of a permanent member of the Council, announced before hand, makes it impossible for the Council to adopt any decision, except in matter of procedure, as in this case there is no agreement between all the members of the Security Council.

It is necessary to state in this connection, the absolute illegality of decisions made by the Security Council in 1950 in the matter of Korea in the absence of representatives from the Soviet Union and the People's Republic of China.”¹²

Soviet jurists also found the veto principle strengthened by the fact that in contrast with the League of Nations, which had set up the principle of equality of the Council and the League Assembly, the United Nations Charter made a distinction between the respective positions of the General Assembly and of the Security Council assigning them different responsibilities. Within this framework, the position of the General Assembly is definitely inferior:

“ . . . permanent members of the Security Council bear singular responsibility for the preservation and strengthening of world peace and security . . . which is expressed . . . in this, that according to the Charter, the Council is this organ, which is exclusively competent to institute international sanctions to support international peace and security. The United Nations Organization differs in this particular point from the League of Nations, that the Security Council is the only UNO body, which can institute measures of this type.”¹³

As the unanimity principle in its United Nations version is the only platform on which socialist and free economy countries can establish working relations, it assures the universal character of the UN. The unanimity principle is the cornerstone of present world public order. As Judge Winiarski from Poland, one of the important representatives of this trend of thought in the International Court of Justice, stated in his separate opinion in the case of *Certain Expenses of the United Nations*:

“ . . . it has been asserted that . . . the maintenance of international peace and security may provide legal justification for certain decisions, even if

these are not in conformity with the Charter, and that in any event a consideration of the purposes must furnish guidance as to the interpretation of the Charter. In the case before the Court, however, this argument certainly has not the importance, which there is temptation to attribute to it; . . . The Charter has set forth the purposes of the United Nations in very wide, and for that reason, too indefinite terms. . . It does not follow, far from it, that the Organization is entitled to seek to achieve those purposes by no matter what means. The fact that an organ of the United Nations is seeking to achieve one of those purposes does not suffice to render its action lawful. . .

The intention of those who drafted it, was clearly to abandon the possibility of useful action, rather than sacrifice the balance of carefully established fields of competence . . . It may be that the United Nations is sometimes not in a position to undertake action which would be useful for the maintenance of international peace and security, or for another of the purposes indicated in Article I of the Charter, but that is the way the Organization was conceived and brought into being.”¹⁴

Professor Krylov developed this trend of thought somewhat further:

“The sovereign equality of the UN members finds expression in the fact, that each country has only one voice. The fact that some decisions of the United Nations organs are made by majority vote does not affect that sovereignty, in particular as the UN General Assembly makes only recommendations, which do not create obligations upon individual states unless expressly accepted by such states. Furthermore, General Assembly decisions imposed upon the dissenting minority by the mechanical majority vote, if the minority’s interests are in accordance with the aims and principles of the Charter of the United Nations, must be regarded as deprived of legal force. The minority has the right to reject those decisions.”¹⁵

This line of thought was strongly supported by the Soviet members of the International Law Commission. On two occasions Professors Koretsky and Tunkin came out against attributing to international organizations a status separate from that of the members which compose them or a position akin to that of a supernational body.

In 1949 Professor Koretsky criticized Mr. Scelle’s ideas as tending to undermine the concept of national sovereignty. Professor Scelle expressed the view that the modern community of nations was tending towards the idea that “States and Governments have no other rights than those conferred upon them by the international juridical order, which alone possessed sovereignty. It should be made clear, therefore, that an act of State was valid only in so far as it was exercised in virtue of the powers conferred upon the juridical agents of the state by the international juridical order. In France, for example, whenever there was a dispute as to the validity of any act, the first question asked was whether the public agent who performed the act had the power to do so. If it was found that he had not, the act was declared void. This theory had received solemn confirmation at Nurnberg. There the accused had been sentenced only because they had exceeded their powers. The

question of the responsibility of the German State as such had arisen only as a side issue. The question to be decided had always been whether such and such a "ruler" had exceeded his powers. The State was, therefore, responsible only by reason of the illegality of the acts of its agents."¹⁶

Professor Koretsky found these ideas quite unacceptable:

"Mr. Scelle's formula tended to replace the idea of the State by that of the Government: according to him there were no States, but only Governments. But this favourite thesis of Mr. Scelle's could not be accepted, in the first place because it was the Constitution of each State which determined the form of its government, and secondly because it rested with the sovereign people to "recognize" its Government, not with the international community. The Commission had decided that the State existed irrespective of recognition by other States; why, therefore, did Mr. Scelle wish to introduce this restriction as regards recognition? Why should the obligations provided for in the Declaration, [of Rights and Duties of States] particularly the obligation of ensuring the maintenance of international peace and security, be the responsibility only of recognized States?

Mr. Scelle's proposal was equivalent to replacing the sovereignty of the people by that of a chimerical non-existent super-State; it ran counter to the wishes of the peoples, who were entitled to create Governments in their own image. No super-State law and no world organization competent to recognize or reject the Statehood of any community was yet in existence. The Declaration should not be a theoretical text reflecting the very controversial opinions of a specialist or group of specialists."¹⁷

"Moreover, the expression 'new principles of international law' implied a super-State according to Mr. Scelle and Mr. Spiropoulos, while the peoples of the world wanted reference to their sovereignty and independence. The democratic heritage was the basis of international law, but the super-State was the ideal of those who wanted to dominate other peoples."¹⁸

Mr. Koretsky continued his criticism stating further that:

"His principal objections to it were, firstly, that it did not embody such fundamental principles of the United Nations as sovereign equality of its Members and the right of self-determination of peoples, and secondly that it did not defend States against interference, in matters falling essentially within their domestic jurisdiction, by international organizations or groups of States. The Commission had completely overlooked the rights of individual States. The purpose of the community of States was to safeguard the rights of individual States. He had been surprised to see that those who on other occasions had championed the rights of the individual as against society should so strongly support the collective principle when it came to rights of States, and raise the question of a super-State which, in his view, would lead to the disintegration of individual States . . . The "doctrine of the super-State" was being used by those who were striving to attain world domination. Instead of supporting the principles of sovereignty, self-determination, independence, true equality of States, and liberation of States

from dependence upon other States, they were trying to prevent any action designed to free the peoples from exploitation and oppression.

With reference to the remark by one of the Commission's members that the concept of the super-State was "revolutionary," Mr. Koretsky pointed out that it was "counter-revolutionary" inasmuch as it was designed to bring about the absolute enslavement of peoples. It showed a reactionary spirit. No one who loved his country, but only those who were striving to acquire strength from outside in order to suppress their own people, would think of such a doctrine."¹⁹

Mr. Koretsky fully recognized international law, violations of which had brough untold suffering to millions of his people, but he wished to point out that international law, which had been born of the struggle for national sovereignty, for liberation from the tyranny of another State, could only exist so long as there were sovereign States whose relations it governed.

Mr. Koretsky's views were articulated during the Stalinist regime. The basic attitude towards the role of the State and of the International Community, and of International Organizations in the modern world have survived the change of regime. Thus Mr. Tunkin maintained faithfully Mr. Koretsky's positions. In the discussion of the Draft Convention on the law of treaties he has rejected the idea of the right of an international organization to make treaties. Early in the discussion he was reported as having said "With regard to paragraph 1 (b), he considered that the character of a treaty was in no way affected by the fact that it had been drawn up within an international organization. The treaty was still an agreement between States, binding upon them; in principle, it was for the States parties to the treaty to settle all problems arising from it, if the rules in force within the organization did not provide otherwise."²⁰

A year later he confirmed his earlier opinion.²¹ In 1965 he still was firm in the view that no international treaties could be made by international organizations. "The constitution of an international organization was a treaty between States; a treaty concluded within an international organization was equally a treaty between States. He therefore saw no reason for going back on the Commission's earlier decision to confine its draft articles to the rules governing treaties between States."²²

Soviet cooperation within the framework of the UN is conditioned by the practical, ad hoc coordination of the interests of the socialist states with those of states belonging to the different social and economic orders. The Soviet participation in the UN represents a limited engagement and partial identification of its national interests with those of the world at large. In this connection, the concept of national sovereignty and of legal equality of all members of the international community becomes rather a concept of the legal equality and of political independence of the two state systems, which must not, either directly or indirectly, through an international organization, interfere in each other's domestic affairs.²³

II. ORGANIZATIONS OF THE SOCIALIST COMMONWEALTH

A. *The Warsaw Treaty Organization*

International organizations of the socialist system have a dual purpose. On one hand, their aim is to maintain and perfect a system of collective security of the Socialist Commonwealth. On the other hand, their aim is to work out a system of economic cooperation between the socialist countries, which will supplement their economies and will realize a model international economic system that may be the prototype for the future economic system of the world.

At the present time socialist international organizations fall into three categories. The first category comprises institutions connected with the Warsaw Pact. This pact encompasses common security arrangements and represents the main channel of military cooperation between the socialist countries. The second category consists of the Council for Mutual Economic Aid, which is the center of a great number of organizations and institutions, which are concerned with various aspects of economic cooperation between the members of the Socialist Commonwealth of Nations. The third group consists of all those institutionalized programs of cooperation which are concerned with the simplification of governmental services in the member countries, aiming at the facilitation of travel, movement of goods, and improvement in communications.

1. *Origins*

In January 1946, the US Government offered to conclude with the Soviet Union, France, and Britain, a four-power mutual assistance treaty to guarantee the disarmament of Germany and the collective security of Europe. It followed this proposal with a draft of such an agreement which it submitted on April 29, 1946, to the Council of Foreign Ministers of the four powers. The Soviet government was not however responsive to the idea of a joint guarantee of European security and suggested that the consideration of the American proposal be postponed to some future date.

While the Soviet government was not prepared to entertain the idea of collective security based on cooperation of the four major powers, it did favor bilateral alliances within its sphere of influence. When the North Atlantic Treaty Organization came into being in the spring of 1949, the USSR had treaties of mutual assistance with the following states in Eastern Europe: Czechoslovakia (December 12, 1943), Poland (April 21, 1945), Rumania (February 4, 1948), Hungary (February 18, 1948), and Bulgaria (March 18, 1948).

In addition, there were in force the following mutual assistance treaties concluded by Soviet allies in Eastern Europe: Czechoslovakia-Poland

(March 10, 1947), Bulgaria-Albania (December 16, 1947), Hungary-Rumania (January 24, 1948), Czechoslovakia-Bulgaria (April we, 1948), Bulgaria-Poland (May 29, 1948), Hungary-Poland (June 18, 1948), Bulgaria-Hungary (July 16, 1948), Czechoslovakia-Rumania (July 21, 1948), Poland-Rumania (January 26, 1949) and Czechoslovakia-Hungary (April 16, 1949).

Albania was connected to the system of bilateral alliances by a treaty with Bulgaria. East Germany had defense agreements with other Eastern European countries and acquired her friendship and mutual assistance treaty with the Soviet Union on June 12, 1964. The seven treaties to which Yugoslavia was a party are not included in this system of treaties. These were repudiated at the end of 1949 following Tito's defection from the Cominform.²⁴

As the key provisions of these treaties were identical, the general effect was that of a collective agreement. Indeed because of their connection with the United Nations Charter,²⁵ bilateral treaties between socialist countries of Europe carried certain advantages which were not available in collective defense arrangements.

From the purely military point of view, as well as in terms of the legal position of bilateral agreements as compared with collective alliances, the Soviet Union and her allies in Eastern Europe had no need to seek additional guarantees for their security by means of a multilateral treaty. The Warsaw Treaty Organization (WTO) defense system was primarily a political measure, a reaction to the policies of the Western Powers as regards the position of Western Germany in the European system. These policies, that had given West Germany the status of a sovereign state and made her a member of the Western defense community, prompted Soviet leaders to initiate a discussion of the political situation in Europe in order to forestall changes in its political morphology. When Soviet action failed, the Warsaw Treaty Organization came into being as a political demonstration against the attempt of the Western Allies to upset the existing balance of power.

On June 24, 1948, foreign ministers of the USSR, Albania, Bulgaria, Czechoslovakia, Yugoslavia, Poland, Rumania, and Hungary issued a declaration condemning the Six Power Conference, which met in London from February to June 1948, for its decision on Germany.²⁶ On October 20, 1950, a similar conference of foreign ministers, without Yugoslavia, and including the German Democratic Republic which in the interim had achieved statehood, issued a declaration condemning the decision of September 1949, by the American, British, and French governments to end the state of war with Germany, and to revise the occupation statute. The declaration also took issue with the decision of the North Atlantic Council to organize a German army contingent as a part of the defense forces of Western Europe.²⁷

By the end of 1954 an impasse had been reached and the fate of the Paris agreements, which were to organize the Western European Union with a joint military force, was somewhat uncertain. Acting in agreement with Czechoslovakia and Poland, the Soviet Union called a conference of the

European states with the participation of the United States in Moscow (November 29-December 2, 1954). Its announced purpose was to settle the German question and to prevent the splitting of Europe into separate defense arrangements.²⁸ As neither the United States nor any of the Western European powers had agreed to participate, the conference issued a warning that if the Western powers should ratify the Paris agreements, the Eastern European states would go ahead with their own collective security arrangements to counterbalance the threat of revived German militarism.²⁹ The declaration of the eight powers which participated in the Moscow Conference of December 1954 stated that: "The states attending the present conference . . . have decided—in case of the ratification of the Paris agreements—to take proper steps regarding the organization of their armed forces and their command."³⁰

With regard to the political situation which prompted the signatories of the Warsaw Treaty to enter into collective security arrangements, the preamble of the treaty stated that they had acted:

"mindful . . . of the situation created in Europe by the ratification of the Paris agreements, which envisage the formation of a new military alignment in the shape of a "Western European Union" with the participation of a remilitarized Western Germany and the integration of the latter in the North Atlantic bloc, which increases the danger of another war and constitutes a threat to the national security of the peace-loving states."

While the political role of the Warsaw Treaty as a reaction to the developments in Western Europe tends to overshadow its other functions, it also played an important role in relation to political developments within the Soviet sphere of influence. The paramount goal was to continue the presence of Soviet troops in Eastern Europe under new legal arrangements and in a new role, not connected with the occupation status of Austria and East Germany.

The signing of the Warsaw Treaty on May 14, 1955, preceded the signing of the State Treaty for the reestablishment of an independent and democratic Austria (May 15, 1955).³¹ The signing of the State Treaty removed the legal basis for the continued presence of Soviet garrisons in Hungary and Rumania. No less important was the need for a new legal justification for the huge Soviet garrison in East Germany. Since October 16, 1949, when the Soviet Union accredited its diplomatic mission in the former occupation zone which had been promoted to the rank of an independent state (DDR), the East German government had been acquiring an ever growing scope of responsibility for the administration of internal affairs in its territory. Soviet cooperation with the German Democratic Republic was reorganized according to the general pattern of relations with any other socialist state in Eastern Europe, and East Germany was accepted as one of the members of the socialist commonwealth of nations.

The signing of the Warsaw Treaty crowned the process of legal integration of the DDR into the framework of the socialist commonwealth. It gave

East Germany the right to have its own army. It transformed the occupation of East Germany into Soviet-East German military cooperation. The presence of Soviet troops in East Germany was no longer dictated by the need to enforce Soviet rights. As Marshal Zhukov, the then Soviet Minister of Defense stated, the presence of the Soviet troops in East Germany "is founded on the Warsaw Treaty and is caused by the need of guaranteeing the security of the whole socialist camp."³²

2. Organization and the Mechanism of Control

A collective security agreement with an elaborate organization, featuring a standing force consisting of national contingents under a joint command, poses a number of delicate problems. In the first place there is the problem of organizing an international military command to function in peaceful conditions. Formulating defense policies to determine the goals of collective security arrangements is an even more difficult problem. These goals cannot be confined to purely military tasks, as the preservation of peace depends upon the political use of the power potential which a collective security organization represents.

These two aspects were of particular importance in relation to the Warsaw Treaty Organization, in light of the history of Soviet control of national affairs in Eastern Europe and the role of the Soviet army in this connection. Consequently, the treaty emphasized strict coordination of national elements of the WTO force under a unified command, and a concentration of all phases of policy in the hands of an international body which would guarantee the political use of the WTO for the purpose of collective defense only.

The Warsaw Treaty Organization was described in two basic documents. On May 14, 1955, representatives of the Soviet Union, Albania, Bulgaria, Hungary, the German Democratic Republic, Poland, Rumania, and Czechoslovakia signed in Warsaw a Treaty for Friendship, Cooperation, and Mutual Assistance, which laid down the basic aims and principles of cooperation of the signatories of the treaty. A separate communique was attached to the treaty and dealt with the establishment and organization of the Joint Command of WTO forces, and also for the appointment of a Soviet Marshal as commander in chief.³³ The treaty also established a Political Consultative Committee, in which each of the parties was to be represented by a member of its own government or by a specially appointed representative. The Committee was given the power to set up auxiliary bodies to assist in its work. Another question involved in the setting up of WTO was the status of East Germany. The East German Democratic Republic was given a status of an independent country with the understanding that this was only a preliminary step towards unification of Germany as a peace-loving democratic state. Consequently, obligations assumed by the German Democratic Republic had no binding force for the future united Germany. While signing the Warsaw Treaty, the East German delegation made a reservation to the

effect that a united Germany would not be bound by the obligations assumed by either of its parts in defense and political agreements. At the time that the Warsaw Treaty was signed East Germany was officially a country without an army. However, it had its own police force since 1948, some of which were stationed in barracks, actually organized along military lines. After the Warsaw meeting (May 1955), and on the eve of the first session of the Political Consultative Committee, East Germany adopted the law of January 18, 1956, which established the National People's Army and the Ministry of Defense. The law became effective on January 24, 1956,³⁴ only a few days before the Political Consultative Committee assembled in Prague.

The Prague session completed the work begun in Warsaw. The Committee decided to include the East German force in the joint forces of the Organization. It also adopted the statute establishing the Joint Command. It further decided to meet as often as necessary, but at least twice a year, and moreover that it would establish two auxiliary organizations: a standing committee for drafting recommendations concerning foreign policy (the Committee for Foreign Policy), and a joint secretariat consisting of the representatives of member states. The Consultative Committee meets in various capitals of the member states, and its permanent headquarters are in Moscow.

The military organization of WTO consists of the commander in chief, the staff of the joint armed forces—composed of army personnel from the member countries with permanent appointments to various positions—and the permanent representatives of the general staffs of the signatory powers. Each national contingent assigned to the Joint Command retains its national identity under the minister of defense of its country, or a specially appointed officer as its commander in chief. Ministers of defense or other officers commanding national contingents are *ex officio* deputies of the commander in chief.³⁵

During the Prague meeting (January 1956), the Consultative Committee announced that the General of the Army, Antonov, had been appointed secretary of the Committee for Foreign Policy.³⁶ The position of chief of staff of the joint forces is also regularly held by a high-ranking Soviet officer.³⁷

Thus the arrangements made within WTO assures a predominant position to Soviet officers who fill commanding positions on the staff of the joint forces, and in the mechanism of the Consultative Committee itself. Furthermore, WTO arrangements assure close integration of the national armies under Soviet command, because command posts in the joint force are held by officers occupying comparable positions in their national defense establishments. The commander in chief of the joint forces is also the Soviet First Deputy Minister of Defense, while his immediate deputies are ministers of defense of other WTO members. This fact creates a subordinate relationship between the Soviet high command and the defense establishments of the other members of WTO.

This relationship between the Soviet Minister of Defense, his deputy

(who is also commander in chief of the joint forces of WTO), and ministers of defense of the other WTO members has a definite meaning as to the degree of control exercised over the defense forces of the socialist countries in Eastern Europe. While only a part of the Soviet Army (which has defense obligations on the other frontiers of the socialist commonwealth) is subordinated to the commander in chief, he is able through his deputies to control the defense forces of the WTO members in their countries, paying little attention to their formal assignment to the joint force. This situation corresponds to the real ratio of contribution of military force by each member country to the defense of the Organization. With superiority of armament, including a missile force, long-range bombers, and a monopoly of nuclear weapons, the Soviet military establishment holds a controlling position regarding decisions in WTO defense policy.

This viewpoint is further amplified by the tenor of the discussions of military matters in the Political Consultative Committee. While the Warsaw Treaty provides that member nations shall assign only a part of their forces to the Joint Command, the Committee treats the Soviet army and the armies of the other members of WTO as an organic whole. Thus, for example, at the May 1958 meeting of the Consultative Committee in Moscow, Marshal Konev reported on the reduction in strength of the Soviet army, on the liquidation of the Soviet garrison in Rumania, and on the withdrawal of a Soviet division from Hungary.³⁸ The final communique suggested that the Committee was called upon to deliberate on these measures as they affected the position of WTO defense arrangements, and that it approved of the decisions of the Soviet government.³⁹

At its meeting in February 1960, the Political Consultative Committee heard a report from the commander in chief of the WTO forces on the strength of the Soviet forces and those of other members of the Organization. Again, it approved of measures adopted by the member countries, referring to their military establishments in terms which suggest that they were considered *in toto* as forces of WTO:

"The decision of the Soviet Union, paralleled by the other countries of the socialist camp, to make another major reduction of their armed forces is regarded by the states represented at this conference as a common contribution of the Warsaw Treaty Organization to the cause of disarmament."⁴⁰

The Warsaw Treaty and the communique on the establishment of a Joint Command, distinguish clearly between the political and the controlling functions of the Consultative Committee. Under Article 6 of the Treaty, the Political Consultative Committee provides in the first instance, a channel for mutual consultations between the member countries, in accordance with Article 3 (paragraphs 1 and 2) and Article 4. Under Article 3: "The contracting Parties shall consult with one another on all important international issues affecting the common interests, guided by the desire to strengthen international peace and security." This consultation clearly refers to situations in which members of WTO seek to formulate joint policy. Another type

of consultation also provided for in Article 3 refers to a concrete situation where there is the threat of an armed attack on one or more of the parties to the treaty, and enables them to take certain steps to assure joint defense and the maintenance of peace and security. Another type of consultation analogous to that provided for in the second paragraph of Article 3 is consultation under Article 4, which is undertaken in the case of an actual attack upon one or more of the members of WTO. In this case, the parties to the Pact may render assistance to the party attacked even prior to consultation, and the latter serves only to deal with the question of whether additional measures are necessarily to be "taken by them jointly in order to restore and maintain international peace and security."

According to the Communiqué, the Political Consultative Committee was given authority to discuss and decide upon all general questions relating to the strengthening of defensive power and the organization of the joint armed forces of WTO. It, therefore, seems that on these grounds the member nations would have occasion to exercise control over the WTO military establishment.

In practice, however, the question of control by the Consultative Committee is reduced to the issue of whether WTO, as a combination of independent states, has a defense policy of its own. Only if it does may the situation arise where the Committee will have to make its opinion prevail against the wishes of the Soviet partner and will influence a policy decision.

A careful analysis of all factors involved, would suggest that there is little likelihood of the Committee exercising influence in this regard. In the matter of the proper organization of the defense forces, representatives of the member countries in the Consultative Committee face the fact that defense ministers of their governments are actively engaged in the work of the Joint Command. Through them, national armies of the WTO countries are subordinated to the Soviet commander in chief. Moreover, the Consultative Committee is faced with the fact that the Soviet contribution to the defense of Eastern Europe far outweighs that of any other member, or even of all other members taken together. It seems therefore, that with respect to control of the WTO military establishment, the Committee is not and cannot be effective, and that consequently WTO taken as a whole has no defense policy of its own making. Owing to the integration of national armies into the uniform defense system for the whole area, and also because of the disproportion in the contributions of the individual countries to the joint force, WTO and its military role may be discussed only within the general framework of the Soviet defense plan.

3. WTO and Collective Security for Europe

From the outset, WTO was seen primarily as a political move. It was signed as a reaction to the Pact of Paris, and it was used in the following years as a *quid pro quo* for the disruption of the Western system of alliances, or as a

platform for negotiations for collective security arrangements which would include both East and West.

The treaty included an extensive exposé of the principles of political action binding the signatory governments as regards the problem of European security. Members of WTO declared their readiness "to sincerely cooperate in all international actions aimed at safeguarding international peace and security." They further stressed that "in agreement with other states willing to cooperate in this matter, they will strive for the adoption of effective measures for a general reduction of armaments and prohibition of atomic, hydrogen, and other weapons of mass destruction" (Article 2). In order to achieve these goals the treaty was made open to "other states irrespective of their social and political systems, which express readiness by participating in the present treaty to assist in uniting the efforts of the peace loving states for the purpose of safeguarding the peace and security of the people" (Article 9).

The treaty was to be operative for a period of twenty years and its validity would moreover automatically extend for an additional ten years unless it is renounced at least one year before its expiration.⁴¹ As the Hungarian crisis indicates a member government has no right to withdraw from the Warsaw Treaty Organization at any other time. In October 1956 the Hungarian Government announced its withdrawal from the Warsaw Pact. This announcement remained without effect, and after the forcible removal of the Hungarian Government by the Soviet armed forces, the Soviet Union, having installed the government of Kadar, disregarded this act. Article 11 provides, however, that the Warsaw Treaty shall cease to be operative in the event that a system of collective security should be established in Europe, with a general treaty including both Western and Eastern European countries.

The position that the Warsaw Pact was only a response to the establishment of the North Atlantic Treaty Organization, in which the Federal German Republic took part, has been often reiterated. In addition to the proposals of mutual dissolution, the Warsaw Treaty Powers have on several occasions proposed various partial measures, such as liquidation of foreign military bases, withdrawal of foreign troops from the territories of other countries to within their own national frontiers, reduction of the armed forces of the two Germanies, establishment of a nuclear free zone in Central Europe, with the pledge that states possessing nuclear weapons shall not use these weapons against states in the Zone. These demands are combined with the recognition and political guarantee of frontiers in Europe, and a final settlement of the German question by according recognition to the two German states. All these questions are only steps towards establishing a collective European security system, assured primarily by the European powers.⁴²

The diplomatic role of the treaty overshadowed its military role and its significance for intrabloc relations. A Yugoslav observer reporting upon the conclusion of the Warsaw Treaty said:

"The declarative part of the Warsaw Treaty puts forward all those political

demands which the Soviet Union has made in its actions for the decreasing of international tensions. It demands that the process of rearming Germany should be stopped, that the problem of security should be settled through a collective European agreement, and that armaments should be reduced and nuclear weapons banned. Viewed through these demands, the Warsaw Treaty is just a new mode of Soviet diplomacy.⁴³

4. *Casus Phoederis: Conditions of Assistance*

Defensive alliances attempt to provide security by making common danger a common cause. A treaty of alliance uses the technique of providing for a stereotype situation, which should be met by a stereotype common action. The precondition for common action is limitation of freedom of individual action by the participating nations, in the sense that members of the alliance agree to consider some aspects of their international relations as matters of common concern, and to react in a predetermined manner to such situations, in terms of the treaty of alliance. This situation constitutes the so-called *casus phoederis*, and it provides the key to determining the political nature of the alliance.

Soviet military alliances in the post-World War II period were initiated by the treaty with Czechoslovakia of December 12, 1943. It envisaged a possible revival of German militarism, and formulated a *casus phoederis* as follows:

"The High Contracting Parties in case one of them in the period following the war should become involved in military action with Germany, which might resume its policy of the *Drang nach Osten*, or with any other state which might join with Germany directly or in any form in such a war, engage to extend immediately to the other Contracting Party, thus involved in military action, all manner of military and other support and assistance at its disposal."

The wording of this formula was a reflection of the situation as it existed at the time when the treaty came into being. The parties of the treaty were at war with Germany. The Soviet Union and Czechoslovakia were two Slav powers threatened by a German policy which sought to expand territorially (*Drang nach Osten*), and the purpose of the treaty was to provide against the repetition of such an exercise in the future. The Polish-Soviet treaty repeated the same formula in a somewhat simplified form, defining *casus phoederis* as the situation in which either of the contracting parties should be "drawn into military operations against Germany which would have resumed her aggressive policy." Later treaties used an even more simplified formula; essentially, however, the *casus phoederis* clause remained the same.⁴⁴

Beginning with the Soviet-Rumanian Treaty of February 4, 1948, this formula was amplified by adding after the words "joining Germany in such a policy" the phrase "directly, or in any other way," which broadened considerably the scope of action that could be considered an "act of joining

Germany in her policy of aggression,” expanding also the range of enemies against which the bilateral alliances would apply.

Article 4 of the Warsaw Treaty provides that in the case of an “armed attack in Europe on one or more of the Parties to the Treaty by any state or group of states, each of the Parties to the Treaty, in the exercise of its rights to individual or collective self-defense in accordance with Article 51 of the Charter of the United Nations Organization, shall immediately, either individually, or in agreement with other parties to the Treaty, come to the assistance of the state or states attacked with all such means as it deems necessary, including armed force. The Parties to the Treaty shall immediately consult concerning the necessary measures to be taken by them jointly in order to restore and maintain international peace and security.”

The duty to come to the assistance of the victim of an enemy attack is combined with the duty of all members of WTO to consult with each other in order to implement a common policy aimed at preventing the outbreak of hostilities. Under Articles 1 and 2, parties to the Treaty have agreed to refrain from the threat of force or its use in their international relations, to seek the solution of international disputes by peaceful means, and to seek cooperation with other states in assuring international peace and security.

In addition, the signatories are under the obligation to consult with each other on all international problems touching upon their common interests (Article 3, paragraph 1). They are also required immediately to consult with one another “whenever, in the opinion of any of them, a threat of armed attack on one or more of the Parties to the Treaty has arisen, in order to ensure joint defense and maintenance of peace and security” (Article 3, paragraph 2).

Thus, the duty of consultation is established to promote jointly a policy of peace; to prevent by proper action the outbreak of war in concrete situations; to render assistance to a victim of an attack; and to decide on measures to be taken jointly in order to restore and maintain international peace and security (Article 4, paragraph 1).

The provisions of Article 4 of the Warsaw Treaty are almost a verbatim copy of Article 5 of the North Atlantic Treaty. Both provide for action either by individual states or collectively in case of an armed attack. In both cases, the extent of their commitment is rather elastic, leaving the application of measures, including armed action, to be determined in respect of the specific situation, without committing the parties irrevocably to the use of force.

A Polish expert found the main advantage of the treaty not so much in its clauses determining common defensive actions, but in the provisions established for political cooperation “which constitute its main content. These forms envisage mutual consultations on all important international issues affecting common interests” (Article 3).⁴⁵

The Warsaw Treaty was designed as a part of the general security system under the United Nations Charter. Article 4 of the Treaty states that

“measures of defense provided in it constitute the exercise of the right of individual or collective defense under Article 51 of the Charter. Such measures as may be adopted shall be communicated to the Security Council and shall be terminated immediately in case the Security Council should take steps indispensable for safeguarding international peace and security.”

And yet the Warsaw Treaty, in combination with the system of bilateral treaties of alliance which have remained in force,⁴⁶ offers advantages to its signatories. Article 53 of the UN Charter provides that:

“1. The Security Council shall, when appropriate, utilize such regional agencies for enforcement action under its authority. But no enforcement action shall be taken without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such state.

2. The term “enemy state” as used in paragraph 1 of this Article, applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.”

The provisions of this article were introduced upon the French initiative, and were supported by the Soviet Union, to cover a system of bilateral treaties between the Allies during World War II, in force at the time when the Charter was drafted. However, the Charter did not exclude its application to treaties concluded following the termination of hostilities, and the provisions of later alliances between the socialist countries were worded to meet the requirements of the Charter.⁴⁷

The special position of bilateral alliances under the United Nations Charter was the subject of a conference assembled by the Polish Academy of Science during the period between the Moscow Conference and the signing of the Warsaw Treaty (April 3-5, 1955). A leading Polish professor of international law spelled out the advantages of the regional arrangements designed to meet a special situation in connection with the last war:

“Regional action is conceived as an interim measure. The period during which it may have application must be fixed by UNO, when it will consider itself able to prevent the danger of aggression on the part of the former enemy state. However, such action may be taken only when the interested government, such as a state member of the United Nations, a party to the regional agreement or one in any other way committed to enforce a regional action against the former World War II enemy, should make a proper motion.”⁴⁸

Thus, the Eastern European system of alliances represents a unique premise resting on two foundations, with advantages attaching to both. Under the bilateral treaty system, members of the security arrangements enjoy freedom of action under Article 53 of the Charter, which aims at

prevention of a revival of the war by one of the former Axis powers. Under the collective instrument, related to the United Nations Charter and aiming at the enforcement in a general way of the principles of collective security under the United Nations, its members have gained a broad opportunity for political action.⁴⁹

5. Definition of Aggression

The common defense arrangements of the socialist commonwealth of nations were devised for cases of external attack. In connection with Soviet guarantees to China under the Treaty of Alliance of February 14, 1950, Khrushchev declared that its provisions applied only to external aggression. Consequently, the Soviet Union will not intervene in incidents involving armed clashes with the Nationalist Chinese in Formosa. Khrushchev warned, however, that the Soviet Union will intervene if the United States should use its forces on the Nationalist side.⁵⁰

Under Article 4 of the Warsaw Treaty, the duty of other members to come to the assistance of a victim of aggression arises only in the case of an attack "by any state or group of states." Professor Tunkin interpreted these terms as a guarantee of assistance in the case of external aggression only. Although, as Professor Tunkin states, the treaty gives no legalistic definition of aggression, as it speaks only of an "armed attack in Europe" "by any state or group of states" it must be interpreted in accordance with the general principles of international law, which refer only to an armed conflict between states.

The Warsaw Treaty, Professor Tunkin assures us, differs basically in this respect from the capitalistic treaties of alliance. Only in the Inter-American Treaty of September 2, 1947, was *casus phoederis* defined as arising in connection with an armed attack on the part of any state. None of the other capitalist alliances of similar nature, including the Brussels Treaty in its 1948 and 1954 versions, the North Atlantic Treaty of 1949, or the Manila Treaty of September 8, 1954, have specified that an attack setting the alliance machinery in motion must be an armed attack by another state.

As Professor Tunkin sees it, the lack of precision on this important point in the capitalist alliances is not without purpose. It permits a broad and loose interpretation of the circumstances authorizing a foreign government to undertake an armed action, which may amount to an intervention in the internal affairs of another state. As by definition there is no danger of an external attack on the part of any socialist state, all capitalist treaties of alliance are designed to be used primarily for the suppression of internal political movements.⁵¹

It must be remembered that the Warsaw Treaty was offered to European countries as an alternative to two opposed collective security arrangements dividing Europe along ideological lines. The Warsaw Treaty was drafted to permit membership to states without regard to their social or political order.

Casus phoederis in this situation had to be restricted to formal cases of external aggression. To put the provisions of the Warsaw Treaty of 1955 in proper perspective, it is sufficient to recall the London Protocol of July 3, 1933, with its famous definition of aggression, which came from the pen of Litvinov, the then chief Soviet negotiator of rapprochement with the West.⁵² That definition, visualizing the many forms and shades of aggression, bore a direct relationship to the contemporary situation. In 1933, chances of communist or leftist revolts in the world were practically nil, while the forces of right-wing totalitarianism were growing in strength. Hence Litvinov's tendency to include even internal subversion under the terms of international aggression.

By 1955 the political situation had changed. The Fascist and Nazi regimes had been destroyed. Internal revolts in Africa and Asia were directed by nationalist forces, or left-wing movements, in order to remove the vestiges of the colonial era. Consequently, the Warsaw Treaty was framed to restrict rather than to broaden the right of armed action; its provisions were aimed at excluding all chance of intervention against "liberation" movements. Hence the rather careful provision of Article 8 of the Warsaw Treaty: "The Contracting Parties declare that they will act . . . each adhering to the principle of respect for the independence and sovereignty of the others and noninterference in their internal affairs."

In other words, the purpose of the Warsaw Treaty is to protect the national sovereignty of the member states in line with the general doctrine and policy of peaceful coexistence of which the treaty is the instrument:

"The Warsaw Treaty is called upon to serve the cause of strengthening the sovereignty, freedom, and independence of states, and also noninterference in their internal affairs.

"The basic aim of the Treaty is defense of sovereignty, which is indeed its general guiding principle. Consequently, if this is the aim of the Treaty, then all its provisions must be interpreted and applied in a manner that takes account of the sovereign rights of the signatories. The starting point of the Treaty is that each of its eight member countries is a sovereign state. Were one of them to impose its will on any of them, this would be regarded as an arbitrary act. The functioning of the basic law of socialism does away with the possibility of conflicts between the countries of the socialist camp. The identity of the basic principles and political aims of all the participants of the Warsaw meeting is a guarantee that their sovereignty will not be violated. . . According to the Warsaw Treaty, none of the participants may delegate to another the right to make important decisions without its cognizance; none may relinquish its sovereign rights. Derived from the new type of relations between the Soviet Union and the countries of people's democracy, the guarantees contained in this Treaty are rooted in life and are based on principles that are real and concrete, and, because of this, effective."⁵³

In the broad perspective of the general policies of the socialist commonwealth, the Warsaw Treaty belongs to the same category of documents that

were giving expression to the ideas of peaceful coexistence. Article 8 is a scaled down version of the so-called five principles of peaceful coexistence (Pancha Shila).⁵⁴

In Professor Tunkin's article on the Warsaw Treaty, the principle of the sovereign right of each state to control its international affairs is carried to its logical conclusion. Assistance under the Warsaw Treaty, as well as under any other type of alliance with the Soviet Union, cannot be given unless the other party expressly asks for it:

"States may in accordance with the right to individual and collective self-defense, render each other assistance in case of an armed aggression by any means, including the application of armed force . . . The question arises, whether a state by the use of this right may render assistance to the other state in case of an armed aggression without its agreement."

The right to give assistance to another state which is a victim of aggression, Professor Tunkin tells the reader, must be balanced by the right to refuse assistance. An effort by a state or a group of states, who are parties to a mutual assistance treaty, to extend assistance unilaterally to another state against the will of that state is illegal.⁵⁶

The interventions in Hungary and in Poland in 1956 have demonstrated that the terms of the Warsaw Treaty did not reflect adequately the realities of international relations among the socialist countries. In explaining the Hungarian intervention, the Soviet government used a number of arguments. The Soviet representative to the General Assembly of the United Nations on November 19, 1956, maintained that Soviet troops were called by the rightful Hungarian government to restore order. Soviet intervention was, therefore, an internal Hungarian affair, and as such was outside the jurisdiction of the United Nations or any other international body.⁵⁷

Later, a Soviet jurist advanced the theory that the Soviet Union acted under the terms of the bilateral treaty of alliance with Hungary to repel a foreign aggression on that country. This theory would seem to contradict Tunkin's interpretation that the Warsaw Treaty, as well as other treaties of alliance with the socialist states, apply only to cases of external aggression involving armed conflict with another state.⁵⁸

As time went on, and Soviet intervention in Hungary continued to be discussed, it was explained as an act of defense undertaken in the name of the socialist commonwealth of nations. Intervention was either linked to the Warsaw Pact, or depicted as an act of a socialist power aimed at the defense of peace, the prevention of World War III. At the 1958 meeting of the Political Consultative Committee, which became an important political conference because of Khrushchev's presence along with other heads of government, the head of the Soviet delegation gave this interpretation of the Hungarian events:

"A striking instance of the efforts of the international reactionary forces to sharpen international tension and to establish a dangerous spot threatening war in Europe was the organization of the counter-revolutionary rebellion

in Hungary . . . However, the Hungarian nation with the assistance of the socialist camp countries saved its government and gave a proper answer to the international reaction and Hungarian counterrevolution."⁵⁹

Speaking after Khrushchev, Kadar, the prime minister of Hungary, put Soviet intervention in Hungary squarely under the regime of the Warsaw Treaty. The treaty, in his view, had a defensive character, and its role was to guarantee a peaceful life, freedom, and independence for the people.⁶⁰ Some time prior to this, when speaking to Hungarian workers, Khrushchev had likened the intervention in Hungary to Soviet assistance rendered to the communists in Vietnam and Korea.⁶¹

Finally, a Soviet writer compared Soviet intervention in Hungary to Chinese intervention in Korea. Both aimed at the preservation of peace and at extinguishing smoldering fires of a world conflict: "The Soviet Union has fulfilled its international duty not only to the workers of Hungary, but also to the nations of the entire world, . . . it was essential not to permit that Hungary be turned into the danger spot from which a new war may ensue. All socialist countries have supported the Hungarian Revolutionary Worker-Peasant Government."⁶²

The events of 1956 put in doubt the whole legal foundation of the mutual relations of the socialist states. The Treaty of Warsaw was only peripherally related to that complicated issue—an issue far broader than the narrow political function the treaty was supposed to perform. WTO was conceived as a political demonstration against the inclusion of Germany into NATO and as a counteroffer of a defense system for all European states, capitalist and socialist alike. It is doubtful whether this offer was made in earnest, but even if it was, the framework of the treaty was not meant to provide a legal basis for relations among the socialist and capitalist states in the new political system in Europe. As a writer in a leading Soviet legal journal noted: "Contemporary international law, which regulates the relations both of socialist and capitalist states, does not require the establishment among such states of relations of broad and full cooperation and fraternal mutual assistance, because by virtue of the very nature of capitalist states such relations are impossible."⁶³

The thesis that there is a single system of international law in force between all members of the international community, socialist and capitalist countries included, was seriously challenged by the Czechoslovak events in the summer of 1968. As the Czechoslovak regime would not conform to the demands of the conference of the Communist Parties of five members of the Warsaw Pact, the Soviet Union included, Czechoslovakia was invaded and occupied by the armies of the Warsaw Pact.

Legal justification of the military intervention was linked with the theory of the two systems of international law, one in force between all members of the international community and the other governing between the members of the Socialist Commonwealth. As an article in the September 26, 1968, issue of *Pravda* explained:

“Socialist countries respect the democratic rules of international law. They have proved it on many occasions by taking decisive actions against the efforts of imperialism to violate the sovereignty and independence of nations. From that position they also reject leftist and adventuristic concepts of the ‘export of the revolution . . .’ In the Marxist understanding of the rule of law, the rules of the relations between the socialist countries cannot be construed from the narrow formalistic point of view not taking into account the general context of the class struggle in the contemporary world. Socialist countries are decidedly opposed to the export and import of revolution.”

As the article explains, each communist party is at liberty to apply the basic principles of Marxism-Leninism in its country, but it is not at liberty to abandon these principles. “Concretely this means in the first place that in its activity no communist party may overlook the central fact characterizing our times, of the struggle of two opposing social systems—capitalism and socialism.”

“The weakening of any of the links of the world socialist system affects directly all socialist countries. They cannot remain indifferent to such a development. And so when the antisocialist forces in Czechoslovakia were discussing the right of national self-determination, they in fact provided a cover-up for the so-called neutralist position for Czechoslovakia leaving the Socialist Commonwealth. However, the realization of such a “self-determination” i.e. the breaking by Czechoslovakia with the Socialist Commonwealth would be contrary to fundamental interests of Czechoslovakia, and would harm other socialist countries. Such “self-determination,” as a result of which forces of NATO could march up to the Soviet frontiers, and the Commonwealth of the European Socialist Countries would have been split in two, would in fact be an attack upon the vital interests, and is contrary to the right of these nations to the socialist self-determination. Discharging their international duty, the Soviet Union and other socialist countries were forced to take action and have acted against the antisocialist forces in Czechoslovakia.”

“The only purpose of the armed intervention”—the writer of the article continued—“is to assist the Czechoslovak people to protect its sovereignty. Those who attack the invasion as illegal forget that the law in the class society is class law. Laws and norms of law are subject to the laws of the class struggle, laws of the social development. They are defined with great precision in Marxist-Leninist teachings and in the documents adopted jointly by the communist and workers parties.”⁶⁴

Thus in perspective of the Czechoslovak events, the role of the Warsaw Treaty Organization is not limited exclusively to cases of external aggression. *Casus foederis* occurs also in a case when an internal development in one of the member countries may endanger the continuation of the communist regime. Armed intervention may be directed not only against the external, but also against the internal class enemy.

Compared with the pattern set up by the Hungarian events in 1956, when

the Soviet Union acted alone and sought approval of the Socialist countries members of the WTO, the Czechoslovak case was preceded by consultations and the decision of the majority of the Warsaw Treaty powers to act.

As in the case of Hungary, in the Czechoslovak case the Soviet Union acted without approval of the Czechoslovak regime (government and party). In the beginning the Soviet Union used the pretext of invitation. The official statement of the Soviet government issued on August 21, 1968, opened with the sentence:

"*Tass* is authorized to state that party and state leaders of the Czechoslovak Socialist Republic have requested the Soviet Union and other allied states to give the fraternal Czechoslovak people immediate assistance, including assistance with the armed forces."⁶⁵

A letter of the same date from the Permanent Representative of the Soviet Union addressed to the President of the Security Council also claimed that there was no need to convene a meeting of the Security Council to consider the case of Czechoslovakia as requested by the United States and other countries as:

"... military units of the socialist countries have entered the territory of the Czechoslovak Socialist Republic pursuant to a request by the government of that State, which appealed to allied governments for assistance, including assistance in the form of armed forces, in view of the threat created by the foreign and domestic reaction to the socialist social order and constitutional State system of Czechoslovakia."⁶⁶

This was denied by the representative of Czechoslovakia in the Security Council, who read a statement by the President of Czechoslovakia which said that the entry of the military units from the Warsaw Pact countries had taken place without the consent of the constitutional government of the Czechoslovak state. On August 24, 1968, the Security Council heard the Foreign Minister of Czechoslovakia, Jiri Hajek, state that "the armed occupation of his country was an unjustifiable act of force, and had not been requested by the Czechoslovak government or any constitutional organ."⁶⁷

Consequently, the position that the intervention was justified by the request of the government of Czechoslovakia was abandoned, as well as allegations that Czechoslovakia was threatened by an external aggression.

The Czechoslovak case seems to indicate that the alliance established by WTO signifies a serious limitation of the internal and external sovereignty of the members of the alliance, with the exception of the Soviet Union which played in the Hungarian and Czechoslovak cases the role of the leading power of the socialist system in Eastern Europe. Intervention is permissible within the framework of the Warsaw Pact, provided that it is demanded or supported by the majority of the Warsaw Treaty powers, against the wishes of the country concerned, even in the absence of external aggression.

Provisions of the Soviet Czechoslovak treaty on the temporary stationing of Soviet troops in the Czechoslovak Republic make no secret of the fact

that the treaty was forced upon the Czechoslovak government by the invasion of the Warsaw Treaty forces. The Treaty promises the withdrawal of invasion forces following the ratification of the treaty. It also makes clear that the treaty was concluded by the Soviet Union acting in agreement with Bulgaria, Hungary, East Germany and Poland as the leading power of the Warsaw Pact system.

There is little doubt that the legal system governing relations among the socialist countries is clearly a regional international system, and while terminology of the legal institutions of that system resemble institutions of general international law, their content and function are different from the international law governing relations between the members of the world community.

B. The Council for Mutual Economic Aid (Comecon)

In January 1949 the Soviet Union, Bulgaria, Czechoslovakia, Hungary, Poland and Rumania assembled in Moscow for an economic conference and they signed an agreement to establish a Council for Mutual Economic Aid. According to the communique it was necessitated by the Marshall Plan, and discrimination of the Western Powers against the socialist countries of Eastern Europe.

According to the communique:

“The conference established further that the governments of the United States of America, England and certain other countries of Western Europe in effect are boycotting trade relations with the countries of people’s democracy and the USSR, because these countries do not consider it possible to subordinate themselves to the dictates of the Marshall Plan, since this plan violates the sovereignty of the countries and the interests of their national economies.

“For the implementation of broader economic cooperation between the countries of people’s democracy and the USSR, the conference recognized the necessity of establishing the Council of Economic Mutual Aid . . . on the basis of equal representation, for the purpose of exchanging economic experience, rendering technical assistance to one another, rendering mutual aid in raw materials, food, machines, equipment and so forth.

“The conference recognized that the Council of Economic Mutual Aid is an open organization which may be joined by other countries of Europe sharing the principles of the Council of Mutual Aid and desirous of participating in broad economic cooperation with the aforementioned countries.

“The Council of Economic Mutual Aid will adopt decisions only with the consent of the interested country.”⁶⁸

1. *Membership*

Following the first meeting of the charter members in Moscow, Albania was admitted in February as a regular member of CMEA. In 1950, after the formation of the German Democratic Republic and the official termination of the occupation status, East Germany also became a member. After the formation of the Council was announced, the Yugoslav government lodged a formal protest against the omission of the Yugoslav Federation from the meeting in Moscow. This protest was rebuffed by the Soviet government. It questioned Yugoslavia's fitness, in view of her defection from the Cominform, to participate in economic cooperation among the socialist states: "The Council for Mutual Economic Aid was not founded for normal economic cooperation such as exists, for example, between the USSR and Belgium or Holland. The Council was founded for economic cooperation . . . of those nations which conduct an honest and friendly policy with each other."⁶⁹

CMEA's membership remained fixed until the period following the demise of Stalin. Since 1956 it has been established practice to invite non-member nations with special interest in the activities of CMEA to send delegations to attend its meetings as observers. Following the April 1955 visit of Khrushchev and Bulganin to Belgrade, Yugoslavia was invited to participate in some of the CMEA meetings, and the Yugoslav delegates were present at the meeting of the Council in May 1956. Simultaneously the same privilege was accorded to Communist China, along with Mongolia, North Korea, and North Vietnam. It seems that participation of observers is limited in principle to sessions of the Council, and only exceptionally extends to deliberations of the special organizations. In April 1959 Yugoslavia formally applied for the right to send regular observers to the CMEA meetings, but this request was rejected.⁷⁰

For a number of years the Far Eastern people's democracies maintained an informal association with the Council on Mutual Economic Aid. Their participation in the work of CMEA was vital and constant. In contrast to the attendance of the Yugoslav observers, who without exception acted as representatives of the Yugoslav government, but not of the Yugoslav Communist Party, Far Eastern communist countries attended the meeting of the party leaders of the CMEA countries to discuss the plans and problems of economic cooperation within the framework of CMEA. For instance, one of the key meetings of the party leadership, which was held in Moscow in May 1958 to map out the new policy in the field of economic cooperation, was attended by representatives of the Communist parties of the Far East. The communique from the conference lists the party delegations of the four socialist countries of the Far East as invited participants.⁷¹

The first important change in this situation occurred in 1962, a turning point in the history of the Council. The June (6-7) 1962 meeting in Moscow of the representatives of the Communist and Workers' Parties of the CMEA

countries was attended by the First Secretary of the Central Committee of the Mongolian Communist Party and the Chairman of the Council of Ministers of the Mongolian People's Republic. The conference passed a resolution admitting Mongolia as a full member of CMEA.⁷² Following this decision the Mongolian delegation took part in the Conference of the Representatives of CMEA which followed the next day,⁷³ and participated in the first session of the Executive Committee.⁷⁴

In his press conference the First Secretary of the Mongolian Party explained that the decision to join the Council on Mutual Economic Aid rested on the fact that Mongolia had established important economic relations with the European people's democracies, and in the interests of the Mongolian economy, closer ties with socialist Europe were necessary.⁷⁵

These views of the Mongolian representative were endorsed in Khrushchev's comment upon the CMEA conference:

"The work of the Council on Mutual Economic Aid in organizing collective economic cooperation does not yet extend to all the socialist countries. The difference in the times when various countries entered upon the road to socialism prevented them from embarking upon collective economic cooperation simultaneously. However, the success of the member states of the Council on Mutual Economic Aid in drawing together economically, will make it easier for all the countries of socialism to turn to the path of collective economic cooperation. Extensive economic ties, paving the way for ripening the conditions for still wider economic cooperation, are developing between the Council member states and socialist states that do not belong to the Council."⁷⁶

It seems, however, that the addition of Mongolia to the regular membership of CMEA is evidence of the important power struggle within the Commonwealth of Socialist Nations. Since Mongolia became a regular member, Albania has ceased to attend CMEA meetings and China has declined to send observers to its sessions.⁷⁷ This would suggest a modification of the long-range plan of progressive integration of the Chinese orbit into the general scheme of economic cooperation of the socialist countries, a plan to which China has been committed since the Moscow meeting of the party leaders of the CMEA countries in May 1958.⁷⁸

However, in spite of the Chinese boycott, two other Far Eastern members of the socialist commonwealth, North Korea and North Vietnam, attended the September 1962 session of the Permanent Commission of CMEA dealing with economic, scientific, and technical cooperation in the light and food industries.⁷⁹ On September 17, 1964 Yugoslavia was finally admitted in the capacity as a regular member of the Council for Mutual Economic Aid, limited however to certain areas of economic activity representing specific interest to the Yugoslav economy.⁸⁰ In addition to Far Eastern socialist states, Cuba also participates in the activities of the Comecon as an observer.

While the official text governing CMEA makes membership a fixed and

permanent right, it seems that difference of opinion on important points of policy between a member state and the Soviet Union preclude the useful cooperation of dissenting members, even including the Chinese colossus, within the framework of CMEA. Active membership in CMEA is predicated upon the "correct" ideological position of each member state.

2. Organizations and Functions

According to the official history of CMEA during the first period (1949-54), CMEA's attention was turned toward the organization of international trade and the perfection of its techniques. During the period which followed (1954-56), CMEA served to coordinate the development plans of the member countries in terms of their industrial structures. Finally, at the Berlin meeting of the Council, it was decided to initiate a period of long-range coordination in economic planning.

Reporting to the Twentieth Congress of the CPSU in February 1956, Khrushchev summarized the achievements of economic cooperation between the socialist countries in the following terms:

"Equal and mutually profitable trade relations, exchanges of technical information, mutual assistance and effective coordination of the national plans have been established among the socialist countries.

"Close economic cooperation opens up singular possibilities for the most advantageous exploitation of raw materials and industrial plant, and effectively brings into harmony the interests of each country with the interests of the socialist camp as a whole. There is no need at present for each socialist country to develop all branches of heavy industry, as was necessary for the Soviet Union, which for a long time was the only socialist country in the capitalist encirclement."⁸¹

In fact CMEA's growth has been slow and uneven. After CMEA was set up in January 1949 the Council held only three meetings during the course of that year, convening again only after the death of Stalin. The first session of the Council, held in Moscow in April 1949, established a permanent, Moscow-based Secretariat for Economic Cooperation. The second session was held in Sofia in August, and the third a Moscow session in November 1949; at both these sessions economic and technical cooperation were discussed.

The key principle of CMEA's action was the correlation of economic activities of the individual satellites with the Soviet economy. As a Czech economic expert wrote some ten years later on the progress of scientific and technical cooperation under the auspices of CMEA: "The foundation for cooperation in this field was laid down at the second session of CMEA held in 1949 in the USSR. It has developed since into a system of agreements on scientific technical assistance, which at this time binds together all the member countries, but more specifically, ties them to the USSR."⁸²

Under those conditions the Permanent Secretariat for Economic Coopera-

tion became an additional Soviet agency for the coordination of economic activities within the Soviet bloc, having technical but not policy-shaping functions. This arrangement, while quite satisfactory in terms of control techniques, was inadequate to carry out overall planning for the development of the available resources of the various countries. However, as long as Stalin lived, the Council had no opportunity to demonstrate its own initiative in economic planning. Its Secretariat was exclusively concerned with the techniques of intrabloc trade and in spite of the complexity of questions of economic cooperation, its structure remained fairly simple.⁸³

The death of Stalin opened the way for a new approach. In March 26-27, 1954, the Council convened in Moscow to consider the proposal submitted by Polish and East German representatives to expand its activities and to consider the formation of standing commissions to tackle various detailed problems of economic growth and cooperation. The question was further discussed at the June 24-25, 1954 session in Moscow, and was relegated to a future meeting of CMEA to be held in Budapest, December 7-11, 1955.

After some exploratory work CMEA's seventh session, held from May 18-25, 1956 (which was also the first one attended by the observers from China and Yugoslavia), decided to expand the permanent establishment of the Council and to create a number of standing commissions (seated in the capitals of the member countries) with expert staffs to handle various aspects of economic cooperation within specified areas of industrial activity.

Initially, according to various reports, some twelve commission were established, some of which were later abolished. Later new commissions were added, some of these dealing with specific areas of industrial activities, others responsible for general areas of cooperation between Comecon members. In 1964 Faddeev, Secretary General of the Council for Mutual Economic Aid listed 20 Commissions giving also the date of their creation and the place of their headquarters as follows:

- 1) Foreign Trade, Moscow, April, 1956
- 2) Electric Power, Moscow, May, 1956
- 3) Machine Construction, Prague, September, 1956
- 4) Agriculture, Sofia, September, 1956
- 5) Non-Ferrous Metallurgy, Budapest, September, 1956
- 6) Oil and Gas, Bucharest, October, 1956
- 7) Chemical Industry, Berlin, October, 1956
- 8) Ferrous Metallurgy, Moscow, October, 1956
- 9) Coal, Warsaw, January, 1957
- 10) On Economic Questions, Moscow, June, 1958
- 11) Construction, Berlin, September, 1958
- 12) Transport, Warsaw, October, 1958
- 13) Peaceful Uses of Atomic Energy, Moscow, July, 1960
- 14) Coordination of Scientific and Technical Research, Moscow, July, 1962
- 15) Standards, Berlin, June, 1962
- 16) Statistical, Moscow, June, 1962

- 17) Finance and Currency, Moscow, December, 1963
- 18) Geology, Ulan-Bator, July, 1963
- 19) Electrical and Electronic Industry, Budapest, July, 1963
- 20) Light Industry, Prague, July, 1963.⁸⁴

While CMEA was assuming this new look the eighth session, held in Warsaw in June 1957, concentrated on the economic situation in two areas vital for further growth—credits and raw materials—thus reflecting a period in which economic problems and economic planning were considered in terms of the overall policies of the bloc, rather than in terms of bilateral relations between the Soviet Union and the smaller countries. Discussions at this session produced a new direction in Council planning. It was announced at the next session (ninth) of CMEA, held in Bucharest in June 1958, that the economic integration of the CMEA area should proceed on the basis of overall coordination of economic planning.

Subsequent sessions, the tenth held in Prague in December 1958, eleventh, in Tirana (May 1959), twelfth, in Sofia (December 1959), thirteenth, in Budapest (July 1960), fourteenth, in Berlin (March 1961), and the fifteenth, in Warsaw (December 12-15, 1961), were concerned with practical implementation of the decision to treat economic problems as the concern of all countries of the Council. The fifteenth session of CMEA produced a broad statement of policy which was submitted as a recommendation to the meeting of the representatives of the Communist and Workers' parties of the CMEA countries held in Moscow in June 1962. This meeting approved them and recommended their implementation by the governments of the member countries.

These various aspects of CMEA activities reflected two important changes in the posture of the individual countries. In the first place, national governments gained a platform from which they discussed common issues in terms of their needs. In the second place, local experts began to be concerned with the policies of the entire socialist commonwealth. This last development was paralleled by the removal of Soviet experts from economic planning and administration in the smaller countries, which in turn called for new sources in information on planning activity and future prospects. This generated a move to give a more formal framework to the CMEA organizations, in order to differentiate them from national agencies of the member countries.

At the twelfth session held in Sofia (1959) the Council adopted new statutes for CMEA and approved a draft of the convention on the legal capacity, privileges, and immunities of the Council and its representatives and officials on the territory of the member countries. The Charter of the Council was amended during the sixteenth session (July 1962) by adding to the organization of the Council an Executive Committee, which held its first two sessions in July and September, 1962, in Moscow.

According to the Charter, the Council on Mutual Economic Aid is an organization open to all countries of Europe that share the idea and principles of the Council and who have agreed to assume the obligations

contained in this Charter. In 1962 membership in the Council was also opened to non-European states. Admission is decided at the session of the Council. Any member country may withdraw from the Council by means of a simple notification addressed to the Soviet government, which is the depositary of the Charter. According to the preamble of the Charter, the founding members expressed their determination to continue developing comprehensive economic cooperation "on the basis of the consistent implementation of the international socialist division of labor in the interest of building socialism and communism in their countries" which is obviously a platform of cooperation unacceptable to the noncommunist countries. Furthermore, a capitalist country would not be able to implement the principle of the socialist division of labor, and thus would not qualify for membership in CMEA.

In practice, therefore, to "share the ideas and principles of the Council" means that only socialist countries are eligible for CMEA membership.

Thus CMEA is an organization of those socialist countries standing in special political alliance with each other and in particular with the Soviet Union. CMEA's position as regards the nonsocialist world is defined by the statement that its members are ready to "develop economic ties with all countries, regardless of their social and state systems, on the basis of equality, mutual benefit, and noninterference in the other's internal affairs." This is the usual formula for the principle of peaceful coexistence, determining relations between the socialist and nonsocialist countries.

According to the Charter the function of the Council is to organize economic, technical, and scientific cooperation of the member countries

"with a view to the most rational utilization of their natural resources, and to acceleration of the development of the production forces; to work out recommendations dealing with economic ties resulting from the economic plans of individual countries, and to study various economic problems in order to foster the economic interests of member nations. Furthermore, its purpose is to assist the member countries in working out and implementing joint measures assuring the best utilization of resources in industry and agriculture, on the basis of the division of labor, specialization and cooperation in production, transport, and shipping of goods, joint investment projects, and exchange of experience and technical and scientific information."

The Council and its organizations have the right to decide procedural and technical questions concerning its work and duties. In all matters of substance the organizations of CMEA issue recommendations. Only formal acceptance commits the member nations to a policy recommended by CMEA. Technically, therefore, recommendations either of the CMEA Council or of the Permanent Commission are little more than proposals suggesting special action to be taken by one or more member states.

Official bodies of the Council operate on three levels of authority. The Council, a conference of governmental delegations which holds its sessions

at infrequent intervals, determines the most important matters of policy, creates new agencies, and hears reports from other subordinate bodies. The Council is basically a platform for consultation among the governments concerned with the power to recommend certain actions for decision by the competent authorities of their countries.

The practical role of the Council was greatly reduced in the summer of 1962, when the CMEA Executive Committee was established. The Committee is both a policy-making and an executive agency. With reference to studies and suggestions developed by the permanent commissions it adopts policy decisions, which are at the same time acts of the executive branch. Its smaller size, enabling greater ease of assembly, together with the fact that it consists of the highest representatives of the countries concerned, favors it over the Council as the seat of real power within CMEA. In general terms, its overall role is comparable to the role of the presidium in the representative institutions of the socialist countries. In its work the Executive Committee is assisted by the Office of the Executive Committee for the Coordination of Economic Plans.

The establishment of the Executive Committee has changed the weight which is now attached to the decisions and actions of CMEA bodies. For some time after CMEA was established its actions and programmatic declarations were of little practical significance. Khrushchev himself complained in 1957: "We said a long time ago that better cooperation should be established among our countries. It is impossible to have developed everything, everywhere, simultaneously. Unfortunately we have spoken in vain."⁸⁵ A year later Khrushchev again lamented, "Factories in the socialist countries must be specialized. Progress in this matter is very slow, although we have had several international discussions . . . After we all went home, everything remained as it had been before."⁸⁶

Thus the Executive Committee was created to translate discussion at high levels into practical measures. Its purpose is to continue, in the interim between CMEA Council sessions, and to maintain the momentum of common action. It meets every three months, without a large staff, but assisted by the technical bodies of CMEA. Its function is not to assess achievements, or to lay plans for the future, but to organize action for the practical implementation of the projects already accepted. According to vice-premier Jaroszewicz, the Polish top economic planner, during its September 1962 session the Committee discussed various cooperative projects planned for realization before 1980, and the coordination of the five-year plan for 1966-70.

According to its communique the first session of the Executive Committee approved specific measures which had been worked out and recommended by the Permanent Commission on Machine Construction.⁸⁷ The communique issued in connection with its second session (September 1962) revealed that the session was attended by the deputy premiers of the member countries, and that it was empowered to make basic decisions affecting the economies

of member nations. In its four-day session (September 25-28) it considered the question of "further promoting the cooperation of the member countries in currency and financial problems, measures for increasing the material and financial facilities for agriculture in those countries, proposals for the production of some important types of machines and equipment, and questions of international railway transportation."⁸⁸

A somewhat clearer distribution of responsibilities appears from the communiques dealing with the concurrent session of the Council and of the Executive Committee held in December 1962 in Bucharest. The Council heard reports from the permanent bodies of CMEA and considered economic plans for the period 1965-80, particularly with respect to the overlapping in machine building industries. The Council also considered agriculture, specialization in production of farm machinery, and the question of creating a joint pool of freight cars in order to serve CMEA countries. It also seems that changes in the organization of CMEA bodies come under Council jurisdiction, as at its seventeenth session it decided to establish a new permanent Commission for Currency and Financial Questions.⁹⁰ At the same time the Executive Committee recommended the introduction of a system of multilateral accounting in the trade operations of CMEA countries and the establishment of an international bank for the socialist countries to finance major projects.⁹¹

3. International Bank of Economic Cooperation

The financing of the economic cooperation within the Socialist Commonwealth of Nations was since the establishment of the Council for Mutual Economic Aid, the weakest aspect of the general plan for the industrial development of the Comecon countries. Various techniques of financing were tried, each with little success. In December 1962, the Council for Mutual Economic Aid and the Executive Commission took up the question of financing the economic integration and industrial development, and decided to establish a Bank to serve the joint needs of the member countries, particularly in the international aspect of their cooperation, including foreign trade, joint projects, and cooperative ventures.⁹²

In October 1963 the Soviet Union, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Mongolia, Poland and Rumania signed a convention to establish the International Bank for Economic Cooperation with its headquarters in Moscow. The Statutes of the Bank were an integral part of the Convention. Simultaneously member countries signed an agreement on Multilateral Payments and Clearing in Convertible Rubles, which provided a legal framework for the financial operations of the Bank. The Bank began its operations as of January 1, 1964.⁹³

The function of the Bank is the clearance of mutual accounts resulting from the economic relations between the member countries kept in convertible rubles. The outstanding balances on individual accounts are settled by

credit or payment in gold or hard currencies. In addition to this basic function, which is linked primarily to the foreign trade among the socialist countries, the Bank undertakes to finance joint construction projects.

The capital of the Bank was fixed in the amount of 300 million convertible rubles, and was to consist of shares brought by the members of the Bank. Shares were calculated according to the share of exports of each country in the foreign trade with other member states, and were to be paid in convertible rubles, gold or any other freely convertible currency.

The Bank clears the accounts of the member countries as foreign trade operations require it. Ideally, accounts should be cleared every month. In case, however, where these accounts are occasionally imbalanced, the Bank credits the accounts with required funds. This is important in the case of countries offering and delivering their products seasonally.

The funds regularly available in the Bank are designed primarily to serve foreign trade transactions, and the Bank in its activities maintains a policy designed to develop and promote exchange of goods over and above the quotas agreed in the yearly delivery plans and agreements between the countries. All other operations, requiring additional funds, are made available to and by the Bank according to the specific agreements between the interested parties. Examples of such projects are construction of the pipeline "Friendship," power grid "Peace," cooperative exploitation of ores, and construction of power plans.

The Bank is an open organization and is not restricted to the members of the Council for Mutual Economic Aid, although in practice no other countries have become members.

The Bank is headed by the Council consisting of the representatives of the member countries. Actual management is the responsibility of the Board of Directors headed by the Chairman. Members of the Board and its chairman are appointed by the Council of the Bank. Decisions of the Council of the Bank are made unanimously. They are binding upon the member countries only when expressly accepted by the governments concerned. Members of the Board of Directors and the Chairman are appointed for five years.

Disputes between the Bank and its clients are to be settled by arbitration. A tribunal is either chosen from the already existing arbitration tribunals available in the member countries, or especially established for the particular case. If there is no agreement on this point, the Foreign Arbitration Commission in the Soviet Union is the competent arbitrator.

The Bank has legal personality, may acquire property, and may own assets, according to the law of the country where such assets are located.⁹⁴

4. *Atomic Energy*

The general situation in the socialist commonwealth of nations relative to the uses of atomic energy for defense, as a source of energy, and as a tool in industry, medicine, and scientific research is characterized by unchallenged

Soviet leadership in all these fields. Unless the scientific revolution simplifies the techniques of atomic energy and reduces its cost, this situation seems likely to continue indefinitely.

In terms of the international organizations of the socialist commonwealth, problems of nuclear energy appear in two contexts, paralleling *grosso modo* the situation in the Western world. The defensive aspect of nuclear energy must be considered within the framework of the Warsaw Treaty Organization. Other uses of the atom are referred to the Council on Mutual Economic Aid, including the role of atomic energy in overall plans for the economic development and industrial progress of the socialist countries. In both these dimensions, the position of the Soviet Union is determined by its control of the natural resources indispensable for military and industrial uses of the atom, and by its leadership in the field of nuclear research.

The Soviet Union occupies a position which permits it to dictate the scope and progress of scientific research and the employment of nuclear energy for industrial and scientific uses in other countries of Eastern Europe. The Soviet position is strengthened by the fact that, in addition to its own sources of nuclear raw materials, it controls and exploits uranium deposits in that part of Eastern Europe which fell into its sphere of influence as a result of the German defeat. One of the first Soviet postwar acquisitions was a monopoly of uranium mining and prospecting in Czechoslovakia, granted free of charge by the Czechoslovak government as a "token of gratitude of the country to the Red Army." At present, uranium is mined in the area of Joachimsthal in western Czechoslovakia and the Příbram region in central Bohemia. Similarly important are extensive mining operations in East Germany. Lesser quantities of uranium are exported from Hungary, Poland, and Bulgaria.

It must be clearly noted, however, that uranium resources in Eastern Europe do not compare to those available in other parts of the world and, in all probability, fall far short both in quantity and quality of the yields of mines in Russia. The important fact, however, is that the Soviet government, by controlling Eastern European deposits, influences directly the scope and the direction of nuclear research, and the utilization of the atom for industrial and scientific purposes.

Ore deposits are mined by joint stock companies in which Soviet and local interests are represented at par, under control of a Soviet director. Uranium concentrates are exported to the Soviet Union and, until the fall of 1956, prices were fixed and unrelated to world fluctuations. The Soviet Union paid only nominal prices and frequently the exporting countries were actually subsidizing the extraction and processing of the ores delivered to the Soviet Union. The situation changed after the death of Stalin. In the general move to terminate economic exploitation by the Soviet Union, prices for uranium deliveries were reviewed; since 1957; the pricing system has become flexible and reflects to some extent at least the real cost of extraction and trends in the free market.⁹⁵

Although some important atomic research was done in Czechoslovakia, Poland, and Hungary prior to the death of Stalin, no cooperation between Soviet scholars and their colleagues in other socialist countries was planned or even attempted. After his demise, the Soviet government decided to extend its help to the scholars and industries of other socialist countries. On January 17, 1955, the Soviet government issued a declaration that it would assist other countries in organizing experimental centers for nuclear research and in utilizing atomic energy for peaceful uses. The declaration was specifically addressed to Czechoslovakia, Poland, East Germany, Rumania and Red China. It indicated, however, that Soviet assistance would not be limited to those countries, and indeed not to the socialist countries alone.⁹⁶

Following some preparatory work, the Soviet government formalized its promises by signing agreements on cooperation and assistance in the area of peaceful uses of atomic energy with the five countries listed in the declaration of January 17, 1955: with Rumania, on April 22, 1955; with Czechoslovakia and Poland on April 23; with China on April 27; and with East Germany on April 28. On June 13, 1955, a similar agreement was concluded with Hungary, and the next year, as one of the manifestations of the detente in Soviet-Yugoslav relations, with Yugoslavia (January 28, 1956).

By the terms of these treaties the Soviet Union obligated itself to furnish each of the socialist countries with an experimental atomic pile and a cyclotron, to render all necessary technical and scientific assistance, and to provide equipment and proper amounts of fissionable and other materials. In addition, the Soviet Union agreed to dispatch technicians to build, adjust, and start atomic piles and to provide proper technical and scientific documentation. The details of Soviet assistance—arrangements for the continuous supply of fissionable material, financial aspects of the cooperation, and technical and scientific aspects of the work—were left to future negotiations. Finally, the Soviet Union agreed to provide facilities for the training of scientific personnel in its scientific institutions.

The first round of agreements dealt with assistance in research and experimentation in other socialist countries. The next step was to extend cooperation to the industrial uses of nuclear energy. Following prolonged negotiations, on July 17, 1956, the Soviet government agreed to assist the German Democratic Republic in constructing an atomic power plant and to provide the necessary material and equipment. On January 29, 1957, the commitment was extended to Czechoslovakia, and on March 28, 1957, to Hungary.⁹⁷

Almost simultaneously (on January 22, 1957) a similar agreement was concluded with Poland. In addition to assistance in constructing the first Polish atomic power plant, it also promised Soviet deliveries of material and equipment for the second experimental atomic pile, and assistance in prospecting, mining, and processing Polish uranium ores and setting up a factory to produce equipment for experimental and scientific purposes. The agreement also provided for training a considerable number of Polish scientists in Soviet scientific institutions.⁹⁸

Agreements on industrial assistance were connected with the general reassessment of relations between the Soviet Union and other socialist countries in Eastern Europe, and in particular with the setting up of the new price system for the delivery of uranium concentrates to the Soviet Union. This event throws an interesting light on the financial relations between the members of the socialist commonwealth. The fact that Soviet partners in Eastern Europe were being paid more than nominal prices for the uranium concentrates forced the Soviet government to seek a method of maintaining a balance of payments directly related to this operation, which might suggest that such matters are viewed from the narrow viewpoint of the administrative interests of each separate industry. Be that as it may, in the case of Czechoslovakia and Hungary the Soviet promise of technical assistance in construction of nuclear facilities for industrial uses was made in exchange for an agreement to continue deliveries of uranium ores.

The commitment to render scientific and technical assistance for research purposes called for the establishment of a special facility for the training and cooperation of nuclear physicists from the socialist countries and, on March 6, 1956, a special agreement provided for the creation of the Joint Institute for Nuclear Research.⁹⁹ It was conceived as a counterpart to the Center for Atomic Research for Western Europe (CERN), from which the Soviet Union was excluded; and application for admission and for participation of its scholars and its institutions had been rejected. The agreement was signed at a Moscow conference by all members of the socialist commonwealth with the exception of North Vietnam.

The first session of the conference of representatives of the member countries was held September 20-27, 1956, in Dubna, which became the seat of the Joint Institute. The conference adopted the statutes of the Institute, the rules of work for its personnel, and approved the work proposals prepared by the Scientific Council as well as a budget including a vast construction program. It also admitted North Vietnam as a regular member of the Institute.¹⁰⁰

According to its statutes, the Institute's purpose is to organize international research in the field of nuclear physics and in the peaceful uses of atomic energy. The Institute has the right to cooperate with other institutes and research organizations situated in the territories of the member states, and is a legal entity. Other states may join the Institute provided their admission is approved by a simple majority of members. Members may also withdraw from the Institute following proper notice delivered not later than three months before the end of the financial year. The Institute is headed by a director who is elected by the Conference of the Representatives Plenipotentiary of the member states for a period of three years. He is assisted in his work by two deputies elected in the same manner for two years. The conference also adopts amendments to the statutes proposed by the director, approves the budget, admits new members, and hears reports periodically submitted to it by the director. The director is assisted by the Scientific

Council, consisting of scholars delegated by each country (three from each member); the Scientific Council is presided over by the director. One of the deputies, delegated by the director, is responsible for the construction program and the administration of the Institute.

The Institute and its research and construction program are financed from the contributions of member states. According to the original schedule listed in the agreement of March 26, 1956, Albania and North Korea each contribute 0.05 per cent of the total, Bulgaria 3.6 per cent, Czechoslovakia and Rumania 5.75 per cent each, Poland and East Germany 6.75 per cent each, China 20.0 per cent and the Soviet Union 47.25 per cent of the total. With the admission of new members, contributions are readjusted accordingly, as they are when a country decides to leave the Institute. Financial and administrative supervision of the Institute's activities is provided by the Finance Commission consisting of members delegated by each country.

The seat of the Institute is in Dubna, in the Moscow oblast, where the Soviet Academy of Science formerly maintained a large research center. This center, with its various research organizations and laboratories described in Article 4 of the agreement, was transferred to the ownership and control of the Institute.

Member states may agree to dissolve the Institute; this agreement must be endorsed by all members. In case of dissolution the property of the Institute reverts to the Soviet Union. Its liquid assets, over and above the means needed to meet the obligations of the Institute, are to be distributed among the member states. The Soviet Union accepted the obligation to reimburse member states for improvements and investments in proportion to their contributions to the budget.¹⁰¹

An important aspect of the organizational setup of the Institute is that the size of the contributions has no bearing upon the vote of the member states or upon their rights as regards the participation of their scholars in the Institute's works. Appointments to all positions are made by the director. Appointments to scientific positions are approved by the Scientific Council. Scholars participating in the scientific program are delegated by the member countries and are paid by them. According to some reports, in addition to the permanent personnel attached to the Institute, a number of younger scholars are sent from member countries for advanced training.¹⁰²

Decisions of the Conference of Representatives are made by a two-thirds majority, and the director and his subordinates may not receive instructions from their national governments concerning work performed in the Institute. Article 22 of the Charter stipulates that "The Institute's directorate is guided in its activities only by the decisions of the Conference of Representatives Plenipotentiary and the Scientific Council, and accepts no instructions whatsoever from single member states."

Soviet commitments, both in the field of nuclear research and in the use of nuclear energy for industrial purposes in Eastern Europe, initiated a new era of cooperation between the Soviet Union and the socialist countries,

particularly within the scope of CMEA. Plans for harnessing the atom to turn the wheels of socialist industries in Eastern Europe, and the resulting claims of the member countries upon Soviet resources and scientific expertise, assumed proportions calling for an international approach to the matter. It was necessary that some common agency should study and determine the needs of each country, and establish priorities in the light of available resources. At its thirteenth session, the Council on Mutual Economic Aid decided to establish a Permanent Commission on Cooperation among the Council Countries regarding the Peaceful Uses of Atomic Energy.¹⁰³

The work of the Permanent Commission is limited exclusively to the use of atomic energy for industrial purposes in terms of the economic organization of various areas within the socialist commonwealth of nations and the role of the several countries in the general plan of integration. Its other responsibility is the allocation of the production of items of equipment for scientific research and for atomic energy plants. As a Soviet author described the tasks of the Commission in 1961: "In the immediate future the Commission has planned to work on straightening out nomenclature of items—equipment and instruments of nuclear technology—manufactured and developed by the CMEA countries, and on effecting the specialization of production in this field and its organization on cooperative lines." The other area of the Commission's responsibility is in the use and supply of radioactive isotopes.¹⁰⁴

The activities of the Permanent Commission are clearly delimited from the responsibilities of the Joint Institute. In fact, however, they together represent a total program approaching the same aims from different angles. The Institute is concerned with the training of scholars and specialists to promote nuclear research and to popularize nuclear technology, both indispensable if atomic energy is to play a significant role in the economic life of the CMEA countries. The success of its work is a precondition for the success of the Commission's planning since, with the exception of Czechoslovakia and East Germany, the CMEA countries are barely at the starting point in mastering the new techniques and in the practical application of nuclear technology both in research and in industrial processes.

5. *Cooperative Projects*

A special group of organizations representing joint construction projects aimed at the creation of facilities to promote the movement of goods and industrial development in specific areas of economic activity.

a. *The Pipeline "Friendship"*

In 1961 five countries, the Soviet Union, Czechoslovakia, the German Democratic Republic, Hungary and Poland completed the construction of a pipeline linking the Transvolga oilfields with the refineries and industries of Poland, Czechoslovakia, East Germany and Hungary. All three countries

participated in the construction of the pipeline, and each country is the owner of that part which was constructed in its territory. The construction of the pipeline required two agreements, one with Poland and East Germany, and the other with Czechoslovakia and Hungary.¹⁰⁵

b. *The Joint Power Grid*

In January 1960, six Comecon countries, the Soviet Union, Czechoslovakia, East Germany, Hungary, and Rumania signed an agreement to link their national power grids, in order to create an enormous system of the power plants in Ukraine, Byelorussia, and those five countries as a single network for the distribution of power according to the needs of countries concerned. The center of the power grid was in Prague, Czechoslovakia, where a Despatch Board was to regulate and control the flow of power from the national power centers across the border lines. Later Bulgaria became a party to this agreement. The operation of the Prague Despatch Board was the subject of separate agreement between the seven countries concerned of May 14, 1962.¹⁰⁶ The Despatch Board is headed by a Council consisting of the representatives of the member countries, and is managed by a Director, his deputy and technical personnel. Czechoslovakia is the owner of the facilities managed by the Board.

c. *Intermetal*

On June 6, 1964, three countries, Poland, Hungary, and Czechoslovakia concluded an agreement to establish a common organization, International Metal, to promote the development of black metallurgy, and related industries in their countries. The three countries were later joined by Bulgaria, the USSR and East Germany. The organization of Intermetal resembles all other organizations in this category. Its Council consists of the representatives of the ministries in charge of black metallurgy of the respective countries. The organization itself is run by the Director, his deputy, and technical assistants. Decisions of the Council are binding for the countries concerned only when accepted by the industrial organizations concerned.

Along the same lines are organized:

d. *the Institute for Standardization* established in 1962 in Moscow with the participation of all socialist countries in Eastern Europe excluding Albania;

e. *International Transfer and Shipping Office* in Moscow, established in 1962 with the same membership;

f. *Common Park of Rolling Stock* organized in 1963 with the central office situated in Prague;

g. *Organization for Cooperation in the Rollbearing Industry* (Bulgaria, Czechoslovakia, East Germany, Poland and Hungary) set up in 1965 in Warsaw.¹⁰⁷

C. Technical Organizations of the Socialist Commonwealth

The purpose of the technical organizations within the Socialist Commonwealth is to promote the movement of goods and persons within the Commonwealth. The Soviet Union with its vast territorial expanses present difficult transport problems. These problems have been increased by the conversion to Soviet Communism of a number of states in the far east. Three international technical organizations have been established:

- 1) Organization for the Cooperation of Railways;
- 2) Organization for the Cooperation of the Socialist Countries in the field of Post and Electric Communications;
- 3) Organization for the Cooperation of Customs Services.

All these organizations, although differing as to their organization, have this in common; they are organized with the participation of the heads (ministers) or their deputies of government departments, responsible for providing appropriate services and their aim is to achieve a simplification of procedure in order to foster communications and transport.

1. Customs

A Soviet economist described the cooperation of the customs services of socialist countries as follows: "The central duty of the customs in the socialist countries is common to all—namely, a factual control of the enforcement of the principles of the government monopoly of foreign trade. This fact represents a broad platform, on which develops creatively the cooperation of the customs organizations of the brotherly countries."

Because all trade between socialist countries is handled by governmental organizations, one would suppose that the concept of monopoly is a natural law of socialist foreign trade, and that little cooperation would be required among the socialist countries. In fact, the purpose of the international cooperation of socialist countries in the field of customs is directed toward a single end, namely to relax customs formalities and simplify procedures which, owing to the nature of things, have very little to accomplish with the exception of preventing smuggling by passengers in international travel.¹⁰⁸

Intergovernmental cooperation in intrabloc trade aims at eliminating those aspects of customs inspection which no longer have a function, and which slow down the shipment of goods and increase the cost of transport. Efforts to reduce customs formalities to sensible proportions are of recent origin and may be related to the growing awareness of a near critical situation in international transport in the socialist commonwealth.

The first conference of the representatives of the customs organizations of the European socialist countries was convened in May 1957, in Warsaw. The Conference decided to invite the cooperation of other socialist countries, and all future conferences were held with the participation of the Far Eastern members as well. The second conference was held in Prague (March

1958), the third in Berlin (October 1959), the fourth in Moscow (October 1961), and the fifth (October 1962) in Berlin.

Deliberations of the representatives of the participating nations dealt with practically every issue concerning the passage of goods or persons across national borders. In the matter of passenger travel, it was suggested that customs inspection and currency control should take place during traveling time in the trains, without causing passengers to disembark; that customs formalities be simplified especially for foreign tourists when traveling in groups; and that foods and beverages transported in restaurant and sleeping cars of international trains be exempted from inspection and customs duties. Regarding the international transport of goods, it was decided to establish joint inspection points, manned by the customs authorities of neighboring countries, and to adopt a single system of documents for all countries. In addition, motor travel and transfer of goods by motor transport and river shipping were discussed. Another issue was that of customs procedures in seaports.

The conferences have also discussed the desirability of the participation of customs officials in working out plans by the national railway administrations for the improvement of transport of goods and passengers. Upon the proposal of the Bulgarian delegation, the fourth conference recommended that no customs documents should be issued or required as regards shipment of goods under the regime of the international railway convention. This seems to be the logical consequence of foreign trade being a government activity, and the delivery program forming an essential part of the national economic plans.¹⁰⁹

International agreements have been drafted regarding the cooperation of governments in customs regulations. It has also been recommended that governments should conclude agreements with other countries concerning customs procedures and cooperation in customs inspections. In 1958, the Soviet Union signed such conventions with Hungary and Poland and, in 1960, with Poland and Rumania. Similar agreements between the other members of the socialist camp in Europe even predate the recommendations of the conference.¹¹⁰

The conference of the representatives of the customs organizations which convened in October 1962 in Berlin with the participation of Bulgaria, Czechoslovakia, Hungary, East Germany, Mongolia, Poland, Rumania, and the Soviet Union, and to which North Vietnam also sent its observers, examined and signed a multilateral Agreement on Cooperation and Mutual Assistance in Customs Questions. It was concluded in order to speed up the movement of goods and persons across international borders. The agreement described and listed various procedures to improve customs operations, and suggested regimes which parties might adopt in their mutual relations on the basis of special agreements. The alternatives were joint customs inspections by the officials of the two bordering countries, or a system of unilateral inspection by the customs officers of one party, to be valid for the

customs authorities of the other party. According to the Soviet source, such a regime is practiced by Hungary and the Soviet Union. The agreement recommended the practice of inspection en route, simplification of documentation concerning shipments of goods, and measures to assure that proper documentation should accompany such shipments. It also provided for mutual exchange of items exported without proper permission from the territory of a neighboring country, aimed particularly at the smuggling of antiques and objects of artistic value. The agreement did not exclude the possibility of adopting even simpler customs regimes by special agreements.¹¹

2. Postal and Communications Organization

On December 16, 1957, representatives of the administrations of the postal services and communications of the twelve states of the Socialist Commonwealth signed a convention, to go into effect June 30, 1958, which established an organization to promote technical and economic cooperation in these areas by means of electrical energy. The organization was concerned with the expansion of lines of communications, improvement of postal services, transmission of radio and television programs, unification of fees for communication services, organization of technical and scientific cooperation in the field of communication, and exchange of experience among the member states. The organization also decides questions of wavelength allocation, and determines a common policy for the socialist states in international organizations that include nonsocialist countries.

The organization consists of the conference of ministers of the postal and communication administrations. Each administration has one vote. Regular sessions convene each year. By a two-third majority vote, the conference may agree to hold an extraordinary session or a regional conference including only certain countries. A secretary and a secretariat are responsible for the minutes and publication of the documents of the conference. Decisions concerning general problems require unanimity, while technical questions are decided by a majority vote. Each conference determines the place and the time of the next session. Between sessions, the work of the organization is handled by the national administration of the country where the next conference is to convene.

The conference of ministers may establish ad hoc working groups or a coordinating commission to prepare the work for a regular or extraordinary session. A coordination commission consists of the representatives of those administrations which had agreed to participate in its work, and is presided over by the minister of the country in which the conference of ministers is to be held.

Expenses of the regular sessions of the conference of ministers are borne by the country in which the conference convenes, while each country covers the expenses connected with its own participation. Other expenses are assumed by the member administrations according to an agreed schedule.

Russian, Chinese, German, and French are the official languages of the organization.¹¹²

3. Organization for the Cooperation of Railways

The Organization for the Cooperation of Railways was established by a decision of the Ministers of Railways gathered at a Conference in Sofia in 1956. On September 1, 1957, the Committee on Railway Transport, the joint authority established by the participating countries, began its activities. All twelve members of the Socialist Commonwealth of Nations in Europe and Asia are members of the Committee. Its activities cover railway and automotive transport.

The organization is headed by the Council of the Ministers of Transport of the countries concerned. In between the sessions affairs of the organization are the responsibility of the Committee for Railway Transport. The Committee issues a Bulletin in Russian, German and Chinese. The seat of the organization is in Warsaw.

Until 1959 cooperation between the member countries was organized along two lines. A separate convention dealt with passenger travel, and another was exclusively concerned with the shipment of goods. In 1959 it was decided to work out a single Convention dealing with both aspects of railway transport, and a unified convention was adopted and given effect as of January 1, 1960.

Activities of the Railway Organization are of paramount interest for the CMEA program of economic integration. The Permanent Transport Commission of CMEA, established in 1958, is located in Warsaw. Its primary task is to work out a general plan for the use of all means of transport, including river craft and sea shipping, in order to contribute to the general plan for economic integration and coordination of CMEA countries and to maintain the flow of goods and raw materials.¹¹³ The commission is also concerned with the technical aspects of the transportation network, including cost and efficiency, improvement of the rolling stock, construction of new roadways, planning for expansion in relation to needs and the compilation of estimates of freight which will have to be handled by the railway network of the CMEA countries¹¹⁴

International railway agreements apply only when goods or persons travel over the territory of at least two states. Freight must follow the most economic routes. One of the achievements of the railway conventions was the unification of tariffs in the international transit of goods, providing for appropriate lowering of rates for long distance haulage. The tariff system and standardization of transit charges in international transport eliminated the need for route planning. The Soviet ruble was adopted as the international monetary unit for the settlement of transport accounts.

In the socialist commonwealth the railway convention replaced the provisions of the Bern convention. The new tariff system is calculated to

favor comprehensive exploitation of the transport system, including sea and river shipping, according to the type of goods most suitable for a given transport facility, thereby achieving full exploitation of all available means of transport. The regime established by the socialist railway conventions applies equally to goods exported to or imported from the capitalist countries.¹¹⁵

Until 1957, when the new statutes of the International Railway Organization came into operation, the contracting parties had cooperated mostly in the field of shipping procedures, railway law, tariffs, and unification of regulations in order to simplify and speed up procedures. Since 1957, the central standing organization has been concerned with technical development, the improvement of the work of border stations, the reconstruction and development of international railways, the economic use of rolling stock, the technical and scientific cooperation in the construction of rolling stock, and the planned unification of the types of rolling stock. Under the aegis of the Permanent Transport Commission of CMEA, the Railway Committee and the members of the Railway Organization began to coordinate national plans in the field of transportation. The work was started on a regional basis aimed at the coordination of plans for international shipments of goods between groups of countries belonging to specific areas in order to provide national planners with information on the volume of information on the volume of international movement of goods. The next step was the elaboration of long-range development plans for the entire area.

Some of the major projects in the field of railway transport in Eastern Europe were worked out and prepared on the recommendations of the CMEA Transport Commission. The technique of cooperative projects is also employed. Construction of the Djurdje Ruse bridge between Bulgaria and Rumania, which provided another connection from Central and Eastern Europe to the Balkans over the Danube, was allegedly financed jointly by the Soviet Union, Poland, Czechoslovakia, Hungary, Rumania, and Bulgaria. In the Far East, the Soviet Union is engaged in the construction of a number of railways in cooperation with China and Mongolia.¹¹⁶

4. Organizations of the Socialist Entrepreneurs

A separate category of the international organizations of the Socialist Commonwealth of Nations constitutes entrepreneurial organizations of non-governmental character. Here belongs in the first place the Conference of the Directors of the Danubian Shipping Companies of the Comecon countries which began its activities in 1953, and deals with various aspects of Danubian navigation of concern to all Danubian countries, such as uniform shipping contracts, towing, port facilities and dues, etc.

The International Organization of Broadcasting and Television Organizations (OIRT) includes in addition to the Soviet Union and all socialist countries of Eastern Europe and Cuba some of the republic members of

the Soviet Union, such as Ukraine, Byelorussia, Lithuania, Estonia, Moldavia, Far Eastern members of the socialist system, China, North Vietnam, North Korea and Mongolia. In addition to the socialist countries OIRT was joined by a number of ex-colonial and neutralist states such as: Iraq, Mali, United Arab Republic. In addition to those Finland is also a member.

Cooperation of the Air Companies of the Comecon countries was the subject of an agreement of October 27, 1965, dealing with unification and standardization of the air services.

In 1966 on the recommendation of the Secretariat of the Council for Mutual Economic Aid members of Comecon signed an agreement providing for a legal framework for the activities of the organizations of socialist entrepreneurs. Organizations of this type have legal personality in accordance with the law of the country in which they are located. They are accorded certain immunities as regards their property, taxation, correspondence, archives, and personnel employed by such organizations.¹¹⁷

NOTES

¹ Cmd. no. 1667, at 42-43 (1922).

² Cf. *infra*.

³ *Mezhdunarodnoe ekonomicheskoe organizatsii* (1962) 138.

⁴ Convention concerning decrease of work hours to forty hours per week (ILO no. 47) of June 22, 1935, ratified by the Soviet Union on June 4, 1956.

Convention concerning annual holidays with pay (ILO no. 52) of June 24, 1936, ratified by the Soviet Union on July 6, 1956.

Convention fixing the minimum age for the admission of children to employment at sea (ILO no. 58) of October 24, 1936, ratified by the Soviet government on July 6, 1956.

Convention fixing the minimum age for admission of children to industrial employment (ILO no. 57) of June 22, 1937, ratified by the Soviet Union on July 6, 1956.

Convention concerning the age for admission of children to non-industrial employment (ILO no. 60), ratified by the Soviet Union on July 6, 1956.

Convention concerning medical examination for fitness for employment in industry of children and young persons (ILO no. 77) of October 9, 1946, ratified by the Soviet government on July 6, 1956.

Convention concerning the restriction of night work of children and young persons in non-industrial occupations (ILO no. 78) of October 9, 1936, ratified by the Soviet Union on July 6, 1956.

Convention concerning freedom of association and protection of the right to organize (ILO no. 87) of July 9, 1948, ratified by the Soviet Union on July 6, 1956.

Convention concerning the night work of young persons employed in industry (ILO no. 90) of July 10, 1949, ratified by the Soviet Union on July 6, 1956.

Convention concerning the application of the principles concerning the right to organize and to bargain collectively (ILO no. 98) of July 10, 1949, ratified on July 6, 1956.

Convention concerning equal remuneration for men and women workers for work of equal value (ILO no. 100) of June 29, 1951, ratified by the Soviet government on April 4, 1956.

Convention concerning maternity protection (ILO no. 103) of June 28, 1952, ratified by the Soviet government on July 6, 1956.

⁵ *Zajavlenie sovetskoi delegatsii na pervom plenarnom zasedanii Genuezskoi konferentsii (Declaration of the Soviet Delegation on the First Plenary Meeting of the Genoa Conference)*, in *Dok.* 5, 191-94.

⁶ *Pravda*, Nov. 7, 1944.

⁷ Molotov, *Rechy Na Paryskoi Konferentsii* (1946) 116.

⁸ *Id.* at 118.

⁹ N.S. Khrushchev, *Za Mir, Za Razoruzhenie, Za Svobodu Narodov*, 288. Cf. also Bobrov, *Printsip ravnopravlia dvukh sistem v sovremennom mezhdunarodnom prave* no. 11; N.A. Ushakov, *Printsip Jedinoglassia Velikikh Derzhav V Organizatsii Objedinnonnikh Natsii* 39-40 (1956).

¹⁰ Ushakov note 10, 51.

"The Security Council differs from all other organs of the United Nations also in this respect, that it alone has the authority to make decisions, which are obligatory for all members of the Organization, while the Charter contains no obligations to fulfill the recommendations passed by the General Assembly, or other main organs of the United Nations. Only the Security Council has the power to adopt measures, to uphold international peace and security, while the General Assembly, which was authorized to examine "all problems connected with maintaining international peace and security" must all such problems, requiring such a measure, submit to the Security Council prior or after its examination."

¹¹ *Mezhdunarodnoe Pravo* 330 (1957).

¹² Ushakov, *op. cit. supra* note 9 at 65; see also, F. I. Kozhevnikov (ed.), *Mezhdunarodnoe Pravo* (1957) 321, 325.

¹³ I.C.J. Rep. (1962) 230.

¹⁴ Krylov, *Istoria Sozdania Organizatsii Objedinnonnikh Natsii* (1952) 258. Cf. Morozov, *Organizatsia Objedinnonnikh Natsii* (1962) 168.

¹⁵ *ILC* 1949, 122.

¹⁶ *Ibid.* 1949, 122.

¹⁷ *Ibid.* 1949, 156.

¹⁸ *Ibid.* 1949, 161-162.

¹⁹ *Ibid.* 1963, 110.

²⁰ *Ibid.* 1964, 62.

²¹ *Ibid.* 1965, 11.

²² Dallin, *The Soviet Union in the United Nations*, 1962.

²³ See Meissner, *Der Ost-Pakt System*; Siegler, *Das Pakt System des Ost Blocks* 26; Kulski, "The Soviet System of Collective Security Compared with the Western System," 44 *AJIL* 453-72 (1955); Wandycz, "The Soviet System of Alliances in East-Central Europe," 16 *Journal of Central European Affairs* 177-84 (1956-57).

The English text of the agreements forming the Soviet-East European system of alliances is to be found in the U.S. Dept. of State, 1 *Documents and State Papers* 227-49 (July 1948), and 1, 681-89, 727 (March and April 1949). The English text of the Chinese treaty of alliance (February 14, 1950) was published in the *New York Times*, February 15, 1950; see also the Supplement to the 37 *AJIL* 84 (1949). The Russian text of the Soviet alliance with Communist China appeared in *Pravda*, February 15, 1950.

In addition to the system of military alliances with the socialist countries the Soviet Union has a treaty of mutual assistance with Finland (April 6, 1948) which is of a different character, and one with Mongolia, concluded in the interwar period (March 12, 1936).

Yugoslavia had the following treaties with other socialist countries, which were abrogated following Yugoslav defection from the Cominform: Soviet Union, April 11, 1945; Poland, March 18, 1946; Czechoslovakia, May 9, 1946; Albania, July 9, 1946; Bulgaria, November 27, 1947; and Rumania, December 19, 1947.

²⁴ Cf. *infra*.

²⁵ *Calendar* 249.

²⁶ *Ibid.*, 277.

²⁸ *Moskovskoe soveshchanie evropeiskikh stran po obspecheniu mira i bezopastnosti v Evrope* 14 (1954); cf. editorial in *International Affairs* (Moscow) 7-8 (January 1955).

²⁹ *Moskovskoe soveshchanie*, supra note 27, 149-59; see also *Izvestia*, December 3, 1954. The Soviet government statement of January 16, 1955, on the German question emphasized once again that the ratification of the Paris agreements would create a new situation making impossible four-power negotiations on restoring German unity. If the agreements are ratified, the statement added, "all that remains for the Soviet Union is to take steps to strengthen its relations with the German Democratic Republic, and by joint effort with the other peaceloving European states, to promote European security in view of the increased threat of aggression. Requisite measures to that end were outlined at the Moscow Conference of European countries on safeguarding European peace and security." *Izvestia*, January 15, 1955.

³⁰ *Moskovskoe soveshchanie*, supra note 27, 15.

³¹ 217 UNTS 223-379.

³² *Pravda*, April 18, 1957.

³³ *Varshavskoe soveshchanie evropeiskikh stran po obezpecheniu mira i bezopastnosti v Evrope* (1955) 21; 49 *AJIL Supplement* 194-99 (1955). Hacker, Uschakov, *Die Integration Osteuropas 1961-1965*, (1966).

³⁴ *Gezetzblatt der DDR*, Part I, No. 8 (1956), of January 24, 1950.

³⁵ 49 *AJIL* 198 (1955). *Varshavskoe soveshchanie*, note 33, 139, 142, and 149; *New York Times*, January 29, 1956; *Zasedania politicheskogo konsultativnogo komiteta* (Praga 27 i 28 janvara, 1956) goda, 50-52.

³⁶ *Zasedania*, note 35, 50-52.

³⁷ *Pravda*, October 30, 1962, reported that Soviet General of the Army P.I., Batov had been appointed chief of staff of the joint forces of WTO.

³⁸ *Materialy soveshchaniya politicheskogo konsultativnogo komiteta gosudarstv uchastnikov Varshavskogo dogovora*, 135 ff. (1958).

³⁹ *Pravda*, *Izvestia*, May 27, 1958; *New York Times*, May 28, 1958.

⁴⁰ *Pravda*, *Izvestia*, February 5, 1960. The real function of the commander in chief of the WTO forces seems to be that of commander of the military forces on the western front of the socialist common-wealth. Forces of this front under his command would include Soviet contingents in East Germany, Poland, and Hungary, and the combat units of the other members of WTO. Soviet units in Western Ukraine and Belorussia or in the Baltic republic would not be included under this scheme within the WTO command.

On September 8, 1961. Marshal Grechko, commander of the WTO forces, held in Warsaw a conference of the defense ministers and chiefs of staff of the Warsaw Treaty countries other than the Soviet Union, and discussed measures to strengthen the combat readiness of the troops under his command. According to the communique, "the conference instructed the chiefs of staff to work out practical measures for further strengthening the defense capacities of the Warsaw Pact countries." *Izvestia*, September 12, 1961.

⁴¹ While formally the provisions of the Warsaw treaty seem to be in line with the general practice, it is doubtful whether any individual state has the right to leave the Warsaw alliance. The Warsaw letter addressed to the Czechoslovak Communist Party on the eve of the invasion in August 1968 leaves little doubt that a denunciation of the treaty must be agreed upon by the other partners, and certainly by the Soviet Union. Cf. supra.

⁴² See e.g. A Declaration of the Political Consultative Committee of the WTO of July 8, 1966, *Izvestia*, July 9, 1966.

⁴³ Erben, "The Warsaw Treaty," 6 *Review of International Affairs* 11 (Belgrade, June 1955): "The Warsaw Treaty will not have any great influence on existing relations between its signatories. Owing to the separate agreements which exist between them, their mutual relations, joint interests and policy, and the single influence by which they are held together, they were a firm bloc even before the Warsaw Treaty, and acted as such in all postwar events, problems and political crises."

⁴⁴ The Polish-Czechoslovak treaty (Article 3) is typical of the later formulations:

"Should either of the High Contracting Parties become involved in hostilities either with Germany, in consequence of her renewed policy of aggression, or with any other state joining Germany in such a policy, the other High Contracting Party will at once give the High Contracting Party so involved in hostilities all the military and other assistance in its power."

⁴⁵ Lachs, "The Warsaw Agreement and the Question of Collective Security in Europe," *International Affairs* 54-55 (Moscow, October 1955).

⁴⁶ "In addition to the Warsaw Treaty of 1955 on friendship, cooperation, and mutual assistance, the socialist countries of Europe are linked by the bilateral treaties of friendship, cooperation, and mutual assistance . . . All these treaties concluded in full agreement with the principles of the United Nations Charter have a strictly defensive character." Kozhevnikov, ed., *Mezhdunarodnoe Pravo* 69-70 (1957). Cf. Hacker, Uschakov, note 33, 35 ff.

⁴⁷ Krylov, *Materialy k istorii organizatsii Objedinonnikh Natsii* 204-05 (1949); Kelsen, *The Law of the United Nations, A Critical Analysis of its Fundamental Problems* 316 ff. and 761 (1951).

⁴⁸ Berezowski, *Umowy o pomocy wzajemnej i system bezpieczeństwa zbiorowego w Europie* 107 (1955).

⁴⁹ A Polish commentator wrote of the Warsaw Treaty as follows:

"The essence of military blocs lies in their exclusive character. The exclusive bloc is inevitably directed against those who are not allowed to take part in it. The essence of the peaceful treaty is defined by its open character, by its being open to any other state expressing readiness to cooperate with its participants for peace. Thus, the Warsaw Treaty continues the noble traditions of the London Convention of 1933 and the Charter of the United Nations. The Protocol of the Convention defining aggression signed in London on July 3, 1933, reads as follows:

"It is hereby agreed between the High Contracting Parties that should one or more of the other states immediately adjacent to the Union of Soviet Socialist Republic accede in future to the present Convention, the said accession shall confer on the state or states in question the same rights and shall impose of them the same obligations as those conferred and imposed on original signatories."

The Polish commentator continued by pointing out that the principles of the Warsaw Treaty are similar in character to those of the United Nations Charters, which in Article 4 stipulates acceptance as members of the Organization of all peace-loving nations who assume obligations contained in the Charter and who, in the judgment of the Organization, can and desire to fulfill these obligations. As distinct from the Warsaw Treaty, such military alliances as, for instance, the North Atlantic Pact, Western European Union, and SEATO are exclusive, and therefore discriminatory, Lachs, note 45, 58.

⁵⁰ *Pravda*, October 6, 1958, *Izvestia*, October 7, 1958.

⁵¹ Tunkin, "O nekotorykh voprosakh mezhdunarodnogo dogovora v sviazi s Varshavskim dogovorom," *SGP*, No. 1, 101-02 (1956).

⁵² Convention defining aggression between Afghanistan, Estonia, Latvia, Persia, Poland, Rumania, Turkey, and the USSR, London, July 3, 1933.

"Article II. In accordance with the above the aggressor in an international conflict, with due consideration to the agreements existing between the parties involved in the conflict, will be considered the state which will be the first to commit any of the following acts:

- 1) Declaration of war against another state;
- 2) Invasion by armed forces, even without declaration of war, of the territory of another state;
- 3) An attack by armed land, naval, or air forces, even without a declaration of war, upon the territory, naval vessels, or aircraft of another state;
- 4) Naval blockade of the coasts or ports of another state;
- 5) Aid to armed bands formed on the territory of a state and invading the territory of another state; or refusal, despite demands on the part of the state subjected to attack, to

take all possible measures on its own territory to deprive the said bands of any aid and protection." 27 *AJIL* 193 (1933).

⁵³ Lachs note 45, 56.

⁵⁴ Royal Institute of International Affairs, *Documents on International Affairs* 313-34 (1954) and 436 (1955).

⁵⁶ Tunkin, note 51, 103.

⁵⁷ Shepilov's speech to the General Assembly, *Pravda*, November 20, 1956.

⁵⁸ Baginian, "Printsip nevmeshatelstva i ustav OON," *SGP*, no. 6, 69 ff. (1957).

⁵⁹ Materialy, note 36, 34.

⁶⁰ *Ibid.*, 91.

⁶¹ *Pravda*, March 14, 1957.

⁶² Dudinskii, *Ekonomicheskoe mogushchestvo mirovoi sotsialisticheskoi sistemy* 32 (1958).

⁶³ Zakharova, "Dvustoronnyye dogovory o druzhbe, sotrudnichestve i vzaipomoshchy sotsialisticheskikh gosudarstv," *SGP*, No. 2, 83 (1962).

⁶⁴ "Suverenitet i internatsionalnye obiazannosti sotsialisticheskikh stran," *Pravda*, Sept. 26, 1968. Cf. Warsaw Letter, *Pravda*, July 16, 1968. Cf. Kudriashev, *Izvestia*, August 25, 1968. Cf. supra.

⁶⁵ *Pravda, Izvestia*, August 21, 1968.

⁶⁶ August 21, 1968. *Dok. S/8759*, United Nations Security Council.

⁶⁷ United Nations Press Services, Press Release WS/360, August 23, 1968, *Ibid.* Press Release WS/361, August 30, 1968.

⁶⁸ *Pravda, Izvestia*, Jan. 25, 1949; *NYT*, Jan. 26, 1949. Cf. Uschakov, note 33. Statutes of CEMA Ved. (1960) no. 15.

⁶⁹ Meissner, *Ost-Pakt-System* (1955) 109.

⁷⁰ *Ekonomska Politika* (Belgrade) April 16, 1959.

⁷¹ *Pravda, Izvestia*, May 25, 1958.

⁷² *Pravda*, June 9, 1962, *Izvestia*, June 10, 1962.

⁷³ *Pravda*, June 12, 1962.

⁷⁴ *Ibid.*, July 14, 1962.

⁷⁵ *Ibid.*, June 10, 1962.

⁷⁶ Khrushchev, "Nasushchnye voprosy razvitiya mirovoi sotsialisticheskoi sistemy," *Kommunist*, No. 12, 5 (1962).

⁷⁷ In December 1961, the Soviet government recalled its mission from Tirana. *Pravda*, December 12, 1961.

⁷⁸ Wszelaki, *Communist Economic Strategy, the Role of East Central Europe*, 1959, 84-85.

⁷⁹ *Pravda*, September 12, 1962.

⁸⁰ Uschakov, note 33, 127.

⁸¹ *Izvestia*, February 15, 1956.

⁸² Doliansky, first deputy chairman of the Czechoslovak government, *Pravda*, May 7, 1959.

⁸³ "During the Stalin era Soviet representatives constantly rejected proposals for the formation of working groups or commissions for certain specified fields in spite of guarded hints, above all by the Czechoslovak representatives. The Soviets were just not interested in ensuring that the Council engaged in constructive economic and political work." Kent, "Comecon as an Instrument of Soviet Economic Policy," *Bulletin*, No. 9, 24 (1960).

^{83a} Ciamaga, *Od wspolpracy do integracji* (1965) 19.

⁸⁴ Faddeev, *Sovet ekonomicheskoi vzaipomoshchy*, (1964) 45-46. Uschakov, note 33, 143.

^{84a} Ciamaga, note 83a, 13.

⁸⁵ *Pravda*, July 14, 1962.

⁸⁶ *Ibid.*, April 9, 1958.

⁸⁷ *Pravda*, July 14, 1962.

- ⁸⁸ Tass, Communiqué of September 30, 1962.
- ⁹⁰ *Ibid.*
- ⁹¹ *Ibid.*, No. 2, 33. *VT*, No. 3, 41-42 (1963); cf. also Tsarevski, "Nov etap vev valutno-finansovite otnoshenia mezhdu stranite chlenki na SEV," *Vanshna Turgoviia*, No. 2, 1-5 (1963). A translation of this important article appeared in 12 *Eastern Europe* 29-32, No. 7 (1963), under the title "Socialist Bankers at Work."
- ⁹² Ushakov, note 33, 145-47, 313.
- ⁹³ *Ved.* No. 7 (1964). Grzybowski, *The Socialist Commonwealth of Nations, Organizations and Institutions*, (1964), 106-07.
- ⁹⁴ Grzybowski, *Soviet Private International Law* (1965) 96-97.
- ⁹⁵ Grzybowski, note 93, 143.
- ⁹⁶ *Pravda*, January 18, 1955; *Europa Archiv* (1955) 7353.
- ⁹⁷ *Soglashenia o sotrudnichestve i pomoshchi v oblasti mirnogo ispolzovania atomnoi energii, zakluchonnye Sovetskim Soiuzom s drugimi stranami* (1958).
- ⁹⁸ Polski Instytut Spraw Miedzynarodowych, *Zbior Dokumentow*, No. 1 (1958).
- ⁹⁹ *Europa Archiv* 9067 (1956).
- ¹⁰⁰ Lebedenko, "Ustaw Obiedinennoho Instituta Jadernikh Isledovaniï," *SGP*, No. 2, 116-18 (1957).
- ¹⁰¹ Text of the Agreement of March 26, 1956, 274 *UNTS* 377.
- ¹⁰² Lebedenko, supra note 73, 116-17; Kapyrin, in *Pravda*, June 11, 1958; Kent, supra note 66, 15-16; MEO 926-31.
- ¹⁰³ Cf. supra.
- ¹⁰⁴ Aleksandrov, "V postoiannikh komissiakh Soveta Ekonomicheskoi Vzaipomoshchy" *VT*, no. 7 (1961).
- ¹⁰⁵ Siliuanov, Kudriashov, "Mezhdunarodnaia organizatsia novogo tipa," *VT*, no. 9, 1960.
- ¹⁰⁶ *SDD XXII*, 404.
- ¹⁰⁷ Cf. Ushakov, note 68, 145-47, Cf. *Spravochnik, Mezhdunarodnye ekonomicheskie i nauchno-tekhniccheskie organizatsii sotsialisticheskikh stran* (1966).
- ¹⁰⁸ *Ved.* no. 14 (1960).
- ¹⁰⁹ Morozov and Smirnov, "Sotrudnichestvo tamozhennykh uchrezhdenii sotsialisticheskikh stran," *VT*, No. 12, 24 (1961).
- ¹¹⁰ *Ibid.*, 24-27.
- ¹¹¹ *Aussenhandel*, 80-81 (1957); Morozov and Smirnov note 109.
- ¹¹² Tokareva, "Mezhdunarodnye ekonomicheskie organizatsii, sotsialisticheskikh stran," *SEMP*, 169-77 (1959); MEO, 446-47.
- ¹¹³ *Calendar*, 443. Tokareva, note 112, *SEMP* 169-77 (1959).
- ¹¹⁴ Aleksandrov, supra note 2, 19; Olejnik, supra note 16, 73-74. According to the communiqué of the Executive Committee of the Council on Mutual Economic Aid: "In connection with the rapid growth in the volume of export and import shipments by rail between the member countries . . . the Executive Committee, approved proposals from the Council's Permanent Commission on Transport providing for supplementary measures to increase the carrying capacity of international rail lines and also to improve the utilization of rolling stock." *Pravda*, September 30, 1962.
- ¹¹⁵ Cf. Grzybowski, note 93, 130-135.
- ¹¹⁶ *Ibid.* 135.
- ¹¹⁷ *D.U.* (1966) no. 45.

Chapter VII

SOVIET LAW OF TREATIES

I. GENERAL PRINCIPLES

A. Terminology

In the present chapter the term "treaty" is used to cover all types of agreements between states governed by international law. Reference to international law is made in order to distinguish contracts, which are treaties, from private law contracts. The distinguishing criterion between these two categories lies in the content of a treaty, which in order to be a treaty must deal with some aspect of relations between states in their capacity as members of the international community.

International agreements include a great variety of instruments described as treaties, conventions, pacts, charters, exchange of notes, protocols, agreed minutes of a conference, and acts. Some of these terms and phrases are quite loosely employed and as a result differ as to their degree of formality. But whatever their form, their legal validity is always the same if they represent a true agreement between parties.¹

The Collection of Treaties, Agreements and Conventions in Force concluded by the USSR with other Nations published by the Ministry of Foreign Affairs distinguishes multilateral from bilateral agreements. It further distinguishes various categories of treaties according to the subject matter: e.g., political agreements (including on establishing diplomatic relations), frontier and legal agreements (consular, dual nationality, legal assistance, social insurance, on diplomatic privileges, on the diplomatic pouch, position of international organizations in the Soviet Union, etc.), agreements on economic and scientific-technical cooperation, concerning the labor regime, communications, transport, on cultural cooperation and health, etc. Distinctions of this type seem to have little practical significance, and no form is specifically designed to serve a special category of treaties. Thus we find, e.g., that consular agreements are usually called conventions, and trade and navigation agreements treaties, although deviations from this terminology frequently occur.

B. *Capacity to Make Treaties*

Treaty-making capacity is an attribute of national sovereignty, and therefore only sovereign states have legal capacity to make treaties. There is considerable controversy among Soviet scholars in this respect because, according to the Charter of the United Nations, the United Nations and its agencies have the capacity to make international agreements. In addition, the socialist international organizations also make treaties. More important, so far as the Soviet practice of international law is concerned, is the question at what moment a political community (including ethnic groups) acquires the capacity to make treaties. The general tendency in Soviet diplomatic practice is to recognize the legal personality of nations even if they are not yet independent. As long as they are capable of maintaining international relations, and therefore also capable of making treaties, they are accorded recognition.²

C. *Law-Making Treaties and Contracts-Treaties*

The growing use of multilateral treaties in regulating international relations has given rise to the theory which distinguishes between law-making treaties and those which have a more limited purpose. For quite some time Soviet theory and diplomatic practice gave little cognizance to the significance of this distinction in international legal order. A change occurred with the growing involvement of the Soviet government in the work of the United Nations. Soviet diplomats increasingly took the view that certain treaties represented a separate category of treaties because they embodied "higher" legal principles, principles of peaceful coexistence, principles which constituted *jus cogens*, and that these principles were binding upon all members of the international community. An example of such a treaty was the Charter of the United Nations and another was the Kellogg-Briand Pact.

Not every multilateral treaty was a treaty endowed with such "higher" legal force. Indeed, treaties containing *jus cogens* became *jus cogens* because their principles were accepted as such by the international community. As Mr. Tunkin explained in the International Law Commission:

"Many examples could be given of a treaty rule gradually extending its sphere of application by custom and becoming accepted as a customary rule by States not parties to the treaty. There was of course no suggestion that a rule embodied in a treaty adopted, say, by one-half of the States forming the international community, could automatically become a rule of customary international law. The intention was to refer to such rules as that which had outlawed aggressive war; that rule had been laid down in the Pact of Paris of 1928, the customary rule of international law for States not parties to that treaty and had been recognized as such by the Nuremberg Tribunal."³

Soviet diplomats and treaty drafters have also recognized that multilateral

treaties, especially those which they claimed were a codification of the obligatory rules of international law (*jus cogens*) presented special problems. For instance, parties to a multilateral treaty had no right to conclude another treaty which would be in conflict with the *jus cogens* rule of a multilateral treaty, while parties to a multilateral treaty could bilaterally make different arrangements, as regards matters covered by a treaty which was not *jus cogens*.⁴

A different problem arose where there was the violation of a rule in a multilateral treaty by one of the signatories as compared to such a violation in a bilateral treaty. This was because the various procedures available to parties in the case of a bilateral treaty are not open in the case of a multilateral treaty.⁵

The different treatment in respect of the violation of rules of multilateral treaties follows from the different legal nature of such treaties. A Soviet member of the International Law Commission explained:

"General multilateral treaties which were purely declaratory of customary norms of international law presented no problem, because even denunciation by one party could not entitle the others to repudiate their obligations, the source of which might lie either in customary or in conventional law. Modern general multilateral treaties should be placed on the same footing as customary rules, which had become part of general international law."⁶

The significance of treaties constituting *jus cogens* was restricted, however, by the fact that only a limited class of treaties could claim such distinctive force. Indeed, only such treaties which favored the Soviet concept of international relations and structure of the international community, were in that category. According to Mr. Tunkin:

"The number of rules constituting *jus cogens* in modern international law was undoubtedly increasing; they related to the maintenance of peace and to the basic problems of international relations such as noninterference in the domestic affairs of States, respect of State sovereignty and the like."⁷

What Mr. Tunkin and the other Soviet members of the ILC had in mind here was that the main trend in international law and international relations was channeled towards the emancipation of colonial and subject nations. In their view, such nations had to be given a full opportunity to assert their rights in international law:

"Among many treaties in existence, there were a number, which were a heritage of the colonial system or had recently been imposed by the colonial powers on new States. As the new States matured and as formal independence were transformed into real independence, the social forces working for peace were bound to rebel against certain treaties concluded earlier."⁸

In other words, the force and legal character of the treaties and their role within the general system of international law had to be seen, not as a function in relations between the states parties to a treaty, nor could the force and legal character of a treaty be defined by the number of states which participated in it. The *jus cogens* character of a treaty from this standpoint

was derived exclusively from its overall relationship to the structure of the new international community, stressing such principles as the self-determination of peoples and the national sovereignty of states.

D. *Socialist International Organizations and the Making of the Treaties*

1. *Personality of International Organizations*

The Soviet position regarding the capacity of international organizations to make treaties is intimately linked to the Soviet understanding of the current structure of the international community. This community is considered as comprising free and sovereign states, under international law enforced by the states themselves. The international community has no supranational governmental system, and the public order of the international community aims at the protection of the rights of all states. Consequently, international organizations must not be seen as elements of an international government, but rather instruments for the international cooperation of sovereign states that are under equal protection of the law. Moreover, Soviet members on the International Law Commission were also opposed to the idea of the representation of state in a treaty-making process, in which an international organization would be understood to be making treaties for its members. The making of treaties by an international organization would be an action of the collective instrument of member states and not the action of a third element acting upon the theory of representation. At the same time, Soviet scholars and jurists have recognized the fact that socialist international organizations have the right to own property, enter into agreements with governments, and to acquire personality in international law. They claimed, however, that these organizations had a legal personality that was *sui generis*, in no way equal to that of a sovereign state.⁹

2. *Elaboration of Treaties by the Socialist International Organizations*

One of the most direct and frequent forms of participation of socialist international organizations in treaty-making processes, is assistance in preparing the text of international agreements, which are later adopted by the members of international organizations. The role of international institutions in this process is important, although from the legal point of view it is secondary, because these institutions only assist in the preliminary stages. An agreement arrived at through the cooperation of the organs of the Council for Mutual Economic Aid was the agreement of March 26, 1956, regarding the establishment of a United Institute for Nuclear Research. Another agreement of the same type was the agreement of April 25, 1962, designed to create a Despatch Board of the Power Grid System of Eastern Europe located in Prague. Furthermore, there was also the agreement to create the

Bank of International Cooperation of October 22, 1963. We may add to this category the agreement of December 21⁶, 1963, for the creation of a common pool of the railway rolling stock. These various projects were prepared by CMEA and include the text of the conventions and agreements which provided not only the basis for the realization, but also the legal foundation for cooperation between the states involved.

3. Treaties Concluded by the Socialist International Organizations

In addition to agreements drafted by the technical organs of the Council for Mutual Economic Aid, which are later adopted as binding international agreements between a certain number of states, there are agreements which are made by the Council of Mutual Economic Aid with individual states, or those agreements made by the Council and offered for adoption to the member states.

a. Agreements Made with Individual States

A typical example of such an agreement is one concluded between the Council for Mutual Economic Aid and the Soviet Union in connection with the location of the Headquarters of the Council in Moscow.¹⁰ The agreement regulates all technical questions connected with the presence of the Council in the Soviet Union, such as their exemption from local jurisdiction, the inviolability of the premises, the use of telecommunications, the status of the personnel, and permanent delegations of the member states, and moreover, the status of the delegations present in the Soviet Union for the meetings of the Council, etc.

An example of a similar type of agreement that obtains between the Council and individual states is the agreement with Yugoslavia regarding its participation in the work of some of the Council's Organizations. The agreement was approved by the XIX session of the Council for Mutual Economic Aid in 1965.¹¹

In addition to the treaties that the Council makes as an international organization there are the various formal and informal agreements in connection with statutory activities, e.g., the setting up of permanent commissions in the capitals of the member countries, the gathering of information and statistics, or the realization of technical improvements in various industrial branches of the member countries.

b. Agreements Regulating Foreign Trade Techniques

One of the important aims of the Council for Mutual Economic Aid was to promote foreign trade between the member countries and since the beginning of its existence, the Council focused attention upon the techniques of trade, and sought to establish some degree of uniformity in both the form and legal conditions of foreign trade transactions. Indeed, until 1951 trade relations within the socialist bloc were not well regulated. Trade

followed routines established by Soviet trading agencies with the capitalist countries and these were ill-suited to the special needs of socialist commerce. Thus, after CMEA was established, one of the first duties of technical personnel attached to the Council was to work out a new system of regulations which would permit a more flexible and more unified system of trade operations. In 1951, the Secretariat of the Council submitted to the members a set of rules on "General Unified Conditions of Trade as Regards Contracts for Mutual Deliveries of Goods." The use of "Unified Conditions of Delivery" of 1951 spread rapidly, and the usual procedure was that Ministries of Foreign Trade of the member nations signed bilateral protocols, which bound the member states to apply these rules in their mutual relations. Their effect was to establish substantial uniformity in trade techniques and in the rules governing trade relations between the socialist countries, including also those who were not members of the Council. Their force was purely facultative, however, because parties could always adapt trading conditions to suit each contingency.

In practice, these agreements regulating the most important types of foreign trade contracts have become general and well established with the result that foreign trade between the Council members has reached a high degree of uniformity and sophistication. At its Warsaw session in 1957, the Council for Mutual Economic Assistance decided to introduce a multilateral clearing system which called for a further unification of the rules governing trade between its members, and in the same year the Foreign Trade Commission of the Council, which was established to assist trade between Council members, produced a new version of the "General Conditions of Delivery." The new Conditions were accepted on December 13, 1957 by the delegations attending the Commission's session and came into force as of January 1, 1958, without any further formality of endorsement or ratification.

Following this acceptance, the foreign trade ministers of member countries made the new "General Conditions" a part of the foreign trade law of each member country through an internal instruction addressed to agencies in charge of foreign trade operations. During the first months of the existence of the new "General Conditions of Delivery of 1958 for the CMEA countries," as they are officially termed, there was some doubt as to the nature and binding force of the new rules. In due course, however, it was generally accepted that the 1958 "General Conditions of Delivery" constituted an obligatory rule for international trade among the CMEA countries. In trade relations with other socialist countries the earlier system of bilateral agreements based on the 1951 pattern continues in force.

The "General Conditions of Delivery" of 1958 deal with the forms of contracts, their conclusion and coming into force, mode of delivery, date of delivery, technical conditions of delivery and quality control, guarantees of quality, mutual claims in this connection, and moreover there are special provisions regarding factory equipment and machinery deliveries. An im-

portant part of the provisions are those regulations dealing with the passage of risk problems. Conditions also cover questions of payments, instructions of the parties, and notifications concerning their business transactions as required by the law. Other important provisions of the 1958 General Conditions of Delivery are those dealing with liability for nonperformance, the effect upon the contract of various occurrences affecting their mutual economic relations, including acts of God and agreements between the countries of the trading partners. According to Article 65 of the Conditions of 1958, "all disputes arising from contracts in foreign trade relations shall be subject to arbitration in the country of the respondent."

On March 29, 1962, the General Conditions of Delivery were supplemented by General Conditions of Contracts for the Installation of Machinery and Factory Equipment, and also the rendering of other technical services between foreign trade organizations of members of CMEA. These conditions were approved by the Council of the CMEA and recommended for adoption by the member countries with effect as of July 1, 1962. Although dealing with a separate type of contract concerning technical services, the "General Conditions of the Installations Services" of 1962 (in short) are a supplement to the regime established by the "General Conditions of Delivery" of 1958. Contracts under the 1962 instrument are linked to contracts for delivery of machinery and factory equipment, which are under the rules of the 1958 regulations and are incidental to those trade transactions. As delivery of these types of capital goods was only partly covered by the "General Conditions" of 1958, other aspects of such contracts including the installation, supervision and setting in motion of the purchased factory equipment and machinery had to be covered by separate contracts.

The purpose of the 1962 Conditions was to regulate the mutual duties of the purveyor and purchaser of services as regards the installation of machinery and equipment uniformly for the CMEA countries. The 1962 "Conditions" dealt with all incidental questions pertaining to the contract of installation. Thus, they provided regulations regarding the import and re-export of tools brought by specialists, the treatment of foreign workers and experts, payment for the use of tools, and for the work of specialists, rates and methods of computation of their salaries and honoraria, technical conditions of work, rules of work, duties of parties as regards accommodation of the teams of experts and technicians, their transport, medical and social security, paid leave and all other matters connected with their presence in the territory of another country. The "Conditions" of 1962 furthermore contain rules concerning liability for nonperformance and the legal consequences of acts of God. Under article 47 of the 1962 "Conditions" disputes between the parties are subject to arbitration, excluding the competence of courts of general jurisdiction in the country of the respondent party. The same arbitration tribunal is also competent to deal with counterclaims. Section 48 of the "Conditions" provided that the substantive law of the purveyor applies to all those questions which are not covered, or not fully covered, by

the 1962 "Conditions" or by the provisions of the contracts. The provisions of the 1962 Conditions of Installation Services apply to all contracts of installations and other technical services, unless the parties come to the conclusion that the special conditions of a particular transaction call for a different set of terms between the parties and provide for them in their agreement.¹²

The chief characteristic of the treaty-making procedure is that the only international act which transformed the proposal of the technical bodies of the Council for Mutual Economic Aid into law governing transactions between governmental trading organizations of the member countries, was a resolution of the Council. The next step was the several acts of the Ministers of Trade who enacted these regulations into the internal law of their countries. The overall effect is very similar to that achieved by a number of other methods, such as conventions on the unifications of internal law regulations (e.g., conventions on checks, bills or notes, or nationality of the married women), or international standards, or recommended procedures adopted by the International Civil Aviation Organization, or indeed conventions adopted by the International Labor Office. The essential features of these types of regulations is that in order to be valid they require affirmative action by the members, and that while the norm in question originates in the international organization, it is put into effect by the act of approval by the states concerned. Such acts are, therefore, true international agreements in which international organizations appear as parties to the agreement.

II. MAKING OF THE TREATIES

Rules concerning the making of the treaties belong to two realms. Firstly, municipal law covers the entire process which involves the expression of the will of the states concerned, with an exception found in those circumstances where the action of the other state interferes with its formulation and expression (error, duress, fraud). Secondly, international law regulates those phases of treaty-making which involves joint action by the participants in the treaty-making process (negotiations, form of the treaty, procedure for the deposition of ratifications, etc.).

The Soviet position in this respect was expressed by Mr. Tunkin in the International Law Commission: "As he saw it, a treaty was the expression of the coordinated wills of States, and the will of a State was expressed through its competent organs. Article 4 of Part I indicated two kinds of organs that could be used for that purpose. The first kind were organs which were *ipso facto* considered as empowered to represent the State in all spheres of international relations: the head of State, the head of Government and the Minister for Foreign Affairs. The second were organs which could be authorized to represent the State for the purposes of a particular transaction or a particular set of transactions.

"The overriding consideration, however, was that States were sovereign and that a State could therefore limit the competence of any of its organs, including those which international law considered as having power to represent the State in all spheres of international activity. In that connection, he preferred to speak of limitations under municipal law rather than of "constitutional limitation." The distinction between constitutional law and ordinary law was material only in the internal sphere; so far as international law was concerned, it was without significance whether a limitation was laid down by the constitution or by an ordinary provision of the municipal law of the State concerned.

"By virtue of the sovereignty of the State, it was therefore possible for municipal law to limit the competence of even the head of State, head of Government or Minister of Foreign Affairs. It was thus possible for one of those dignitaries to lack competence to perform any particular act connected with the treaty-making process. If the dignitary concerned were to perform such an act *ultra vires*, the will of the State would not have been expressed and no agreement would have been concluded."¹³

The legal consequence of this point of view was that until a text negotiated by the representatives of the states concerned became a binding treaty, parties were free to act in accordance with their own interests. Mr. Tunkin illustrated that point by reference to the Geneva Conference on the Law of the Sea, 1958, where the United Nations urged that a resolution be adopted at the beginning of the Conference to the effect that no state participating in the negotiations should extend the breadth of its territorial waters. There was strong opposition to this proposal. Indeed Mr. Tunkin was certain that if any of the participants had adopted a new rule on the extent of its territorial waters, it would not have been contrary to the rules of international law.¹⁴ He was moreover certain that until formal exchange of ratifications had taken place, the state party to a treaty was not bound by its provisions. Mr. Tunkin alleged furthermore, that in cases where a change of government had occurred between the time when a treaty was ratified and the time when the instruments of ratification were exchanged, and that the new government did not wish to proceed with the matter, the State could not be regarded as bound by the treaty, because the last stage viz consent on the international level had not been completed.¹⁵

A. Treaty-Making Power

The 1918 Constitution of the RSFSR distributed responsibility for the conduct of international relations including treaty-making powers between the All-Russian Congress of the Soviets and its All-Russian Central Executive Committee and the Council of People's Commissars. It failed to specify matters which were the exclusive responsibility of the Council of People's Commissars, although it provided that a Commissar for Foreign

Affairs be included in the Council. The Constitution was more specific as to the responsibilities of the Congress. Congressional responsibility included a general direction of foreign policy regarding the admission into the RSFSR of new members of the Federation, of relations with foreign states, the declaration of war and conclusion of peace treaties, concluding foreign loan agreements, customs and trade agreements, financial agreements and ratification of peace treaties.

The same pattern was followed in the Agreement upon the formation of the Soviet Union of December 30, 1922, which reserved to the exclusive responsibility of the Union government, the representation of the USSR in international relations, changes of the borders of the Union, the making and ratification of treaties, contracting state loans, declaration of war and making of peace, and accepting new Soviet republics into the Union.

The agreement was implemented by the Constitution of the USSR of 1924, which listed within the exclusive jurisdiction of the Union (Article Ia):

“Representation of the Union in international relations, conduct of diplomatic relations and conclusion of political and other treaties with other countries,”

The overall effect of the 1922 Agreement and of the 1924 Constitution was that the Soviet Union although a federation was in international relations, a unitary state.

The powers thus concentrated at the federal level were to be exercised by the supreme organs of the USSR (Article 1 of the Agreement of the Union). These organs were (Article 2) “The Congress of Soviets of the USSR and during the intervals between the Congresses, the Central Executive Committee of the USSR.” This arrangement was incorporated in the Constitution of 1924, subject to the proviso that Articles 17 and 29 of the Constitution authorized the Presidium of the Central Executive Committee to act for the Committee when it was not in session in all matters that were not reserved for the Full Committee, unless the Committee imposed specific restrictions on its Presidium as regards disposal of concrete matters. In terms therefore of the Constitution of 1924, the Presidium was authorized to ratify treaties made by the Soviet Union.

The agreement on the formation of the Union of 1922 and the Constitution of 1924 reserved no functions for the Council of People's Commissars both as regards the representation of the Union in international relations, or the treaty-making process. In the Constitution the Council was described as the executive and administrative agency of the Central Executive Committee (Article 37) and not within the category of a Supreme Agency of the Union. In fact, however, the Council and the Commissar for foreign officers played an important role in the foreign relations of the Soviet Union. Indeed the Statute on the People's Commissariat for Foreign Affairs of November 12, 1923,¹⁶ which was enacted even before the Constitution came into force stated that:

“The People's Commissariat for Foreign Affairs is charged with conduct-

ing diplomatic relations of the USSR and of the component republics of the Union with foreign states.”

Furthermore, the Statute of 1923, confirmed a practice which had developed earlier viz that examination of all agreements concluded with foreign governments, and confirmation of those agreements which did not require ratification was the responsibility of the Council of People's Commissars.¹⁷

However, even the Statute of the People's Commissariat for Foreign Affairs left so many questions unanswered, that on May 21 and 22, 1925, three decrees were enacted which dealt with various aspects of the treaty-making process. The three decrees distinguished between treaties and agreements which were concluded in the name of the Congress of the Soviets of the USSR, and those which were concluded in the name of the Council of People's Commissars. The first category had to be ratified by the Central Executive Committee of the Congress, or in between the session, by the Presidium, while the second category were to be confirmed by the Council. Credentials to negotiate these treaties were issued either by the Central Executive Committee or the Council of People's Commissars depending again upon the category of the treaty or agreement.¹⁸

A good deal of confusion regarding the initial provisions of the constitutional and procedural provisions concerning the exercise of the treaty-making power in the Soviet Union was due to the early notions about the structure of Soviet government. All the organs of state power were to be clearly suggestive of the “representative” principle and they were to have a monopoly for laying down basic rules of law and formulating principles of policy. Other organs were considered as organs of an administrative character, and as such were limited to executive functions. Consequently, there was an emphasis on the treaty-making power of the Congress and its permanent organ, the Executive Committee. In terms of the Soviet viewpoint of the structure of authorities, the function of the head of state, with its representational prerogatives in the field of international relations was lacking.

As matters developed, however, there was a tendency to emphasize the role of the Council of People's Commissars as the central organ for treaty-making.

On October 2, 1925, a decree “on the procedure for submitting international treaties and agreements concluded in the name of the USSR to the Government of the USSR for its approval confirmation and ratification,” was enacted.¹⁹ The decree of October 2, 1925 established a procedure which made of the Council of People's Commissars the central authority as regards the making of the treaties covering all categories. The Council had to examine the drafts of treaties and agreements which were to be submitted by the plenipotentiaries of the Soviet Union to other states for their adoption and signature. It also examined drafts that the other countries submitted to Soviet plenipotentiaries, as well as the counterdrafts and counterproposals of the Soviet negotiators. In the event of Soviet negotiators agreeing with the

other parties as to the text of an agreement or treaty, it was then examined by the Commissariat for Foreign Affairs, and if it substantially departed from the original proposals approved by the Council the text would again be referred to the Council for a second examination and approval. After a treaty is signed it is submitted to the Council with information that it would go into force if no further modification is deemed necessary. The Council may well indicate that the prospective treaty be submitted to the Congress of Soviets, the Executive Committee or its Presidium for ratification. In practice, therefore, the entire process of negotiation, approval, and ratification is in one form or another controlled by the Council of Ministers, with the Commissariat for Foreign Affairs being its executive organ as regards all stages of the treaty-making process.

The system thus established survived until the Constitution of 1936, which in its article 14, speaking of the powers of the federal authorities stated that:

“The jurisdiction of the Union of Soviet Socialist Republics, as represented by the highest organs of state authority and organs of government, includes:

- a. Representation of the Union in international relations, conclusion and ratification of treaties with other states and
- b. questions of war and peace.”

Article 31 provided that the Supreme Soviet of the USSR would exercise powers specified in article 14, unless they were assigned in terms of other provisions of the constitution, specifically to other organs of the Union. Article 49 provides that the Presidium of the Supreme Soviet has to “ratify international treaties.”

On August 20, 1938, at a joint session of the Soviet of the Union and of the Soviet of Nationalities, a special law on the procedure of ratification and denunciation of international treaties of the USSR was enacted.²⁰ The law restated the provisions contained in the Constitution (Article 49), that the ratification of treaties was the exclusive responsibility of the Presidium of the Supreme Soviet. Only the most important treaties would require their ratification, for example, treaties of peace, mutual assistance against aggression, treaties of mutual nonaggression, and those treaties to which both parties agreed that they required ratification.

The 1938 law also provided that the organ which had the power to ratify a treaty also had the authority to annul and denounce it. In the Soviet context, only the Presidium of the Supreme Soviet had the power to annul or denounce a treaty which it had itself ratified. All other treaties, however (and that would constitute a vast majority of them) would be subject to annulment and denunciation by the Council of People's Commissars.

The Constitution of 1936 gave expression to what had been Soviet practice prior to its enactment. Its overall effect was to center all policy-making in representative bodies. The role of the Council as defined in the 1925 legislation was more technical in nature; it was from a general standpoint, the guardian of Soviet interests. This system was changed by the

decree of the Presidium of the Supreme Soviet of April 26, 1940,²¹ which repealed the decree of May 21, 1925 on the procedure for conclusion and ratification of international treaties of the USSR. Under the system introduced by the Constitution and the law of 1938, the Soviet Union's treaty-making concepts came close to the techniques generally prevailing in international relations. The making of treaties is fundamentally then, the responsibility of the Council of People's Commissars with the commissariat for foreign affairs as its main executive body. The traditional role of the head of state in the treaty-making process is entrusted to the Presidium of the Supreme Soviet which holds exceptional powers that are not exercised by way of delegation or substitution for the Supreme Soviet itself.

Another change in the system was made by the law of February 1, 1944, which amended the Constitution of 1936 and gave the Union Republics the right to conclude international treaties with foreign powers directly, and through their own representatives.

B. *The Treaty-Making Process*

1. *Negotiation of Treaties*

During the early years the Soviet regime handled its foreign relations with an almost total absence of formality as regards the appointment of delegates for the negotiation and conclusion of international agreements with other countries. Agreements were made by delegations which frequently were masquerading as representatives of the interests of consumer groups, or of business circles, although they were essentially acting in the name of the revolutionary regime. Also, because for a number of years only a handful of governments had established diplomatic relations with the Soviet Russia, the Soviet government made agreements with foreign private organizations or foreign business circles which were international in scope.

It may be doubtful whether agreements of this type may be characterized as international agreements *strictu sensu*, however, they are looked upon by the Soviet government and Soviet scholars as representing the true interests of the Soviet state in its relations with foreign countries. These early agreements dealt primarily with trade and economic cooperation. An early example of a Soviet trade delegation to a foreign country was the delegation which in February 1920 went to Estonia to establish trade relations with that country. Another instance of the early trade agency representing Soviet interests was Tsentrosoiuz, a cooperative of consumer associations, which was in charge of commercial relations with Great Britain and other countries of Western Europe. It negotiated a number of agreements, among others, with Denmark, Sweden and Italy.²²

A further example of such trade activity directly involving the Soviet state was an agreement made between the People's Commissariat of Foreign

Trade of the RSFSR and an American consortium of Drugs and Chemical Products Companies of October 27, 1921.²³ The exchange of correspondence between Tsentosoiuz represented by Krasin and the Minister of Foreign Affairs of Sweden left little doubt that, in addition to various trade transactions, both sides were also busy negotiating an informal trade and navigation agreement.²⁴

Once, however, normal relations with a number of states were set up, a formal procedure was established for the appointment of the members of delegations to represent the Soviet Union in the negotiation of treaties. The decree of May 22, 1925 provided that:

"Representatives plenipotentiary of the USSR, accredited to foreign governments, as well as the heads and members of delegations set up for negotiations concerning conclusion of foreign treaties which are subject to ratifications, are appointed and recalled by decrees of the Central Executive Committee of the USSR or by its Presidium (Article 13). Moreover, the "Full powers and letters of recall of . . . the heads and members of delegations appointed to negotiate international treaties which require ratification, require the signature of the president and secretary of the Central Executive Committee of the USSR and the countersignature of the People's Commissar for Foreign Affairs."²⁵ The heads and members of delegations appointed to negotiate treaties which did not require ratification were appointed by the Council of the 1922 agreement to establish the Soviet Union, the 1924 Constitution, and the decree of May 21, 1925. The Constitution of 1936 introduced two innovations. The Constitution omitted the list of treaties requiring ratification, stating however that "The jurisdiction of the Union of Soviet Socialist Republics, as represented by its highest organs of State authority and organs of government covers

- a. representation of the Union in international relations, conclusion and ratification of treaties with other states;
- b. questions of war and peace."

In normal Soviet practice the full powers to negotiate a treaty includes, in addition, authorization to sign a treaty. On more solemn occasions, as for instance in connection with important treaties, such as treaties of alliance and treaties aiming at restriction of nuclear armaments (test ban and non-proliferation treaties) negotiations are geared to produce an agreed text (document of the negotiators) which is signed in a separate ceremony, by officials who were not directly involved in negotiations.

While the authority of negotiation is purely a matter of internal law, the formal text enumerating full powers represents—for the other party, or parties—an adequate basis for negotiating an agreement. Negotiators of the other party have the duty to ascertain what authorizations are included in the full powers of the Soviet negotiators, but having established the extent of these powers they are not obligated to scrutinize other documents, or instructions binding upon Soviet negotiators.²⁶

2. *Ratification of Treaties in Soviet Practice*

The majority of scholars, and this is borne out in international practice as well, adhere to the view that unless the treaty, expressly provides otherwise, the signature of the negotiators of an agreed text of a treaty represents only a first step in the process of giving the treaty a legal force. The final approval of such an international agreement calls for its ratification.²⁷ International law does not go further than that, and there is no category of international treaties which is by law exempt or could not be made exempt by agreement between the parties from the ratification procedure. Constitutions of various states provide that because of their content, certain categories of treaties may be ratified only after their ratification has been authorized by the representative institution. Such provisions have been designed to lend the assurance that matters which had been reserved exclusively to the jurisdiction of national representative bodies, should not be decided by means of an international agreement without their agreement and participation.

Soviet Constitutions have had similar provisions. Article 49 of the Constitution of the RSFSR provided that "relations with foreign states, the declaration of war and the conclusion of peace, as well as making loans, customs and commercial treaties and financial agreements" were within the jurisdiction of the All-Russian Congress of Soviets and the All-Russian Congress Central Executive Committee. Indeed, this implied broader powers than those of mere ratification, and although ratification was certainly included in the process of treaty-making so described, the meaning of Article 49 was in fact much broader, because it also included the decision about whether a specific treaty should be negotiated. Ratification, as a function exercised specifically by the supreme organs of the Soviet Union, appears in the 1922 agreement to establish the Soviet Union, the 1924 Constitution and the decree of May 21, 1925.

The Constitution of 1936 omitted the list of treaties requiring ratification, stating simply that within the exclusive jurisdiction of the Union are all matters falling into the department of international relations, including questions of war and peace.

The 1938 law on the ratification and denunciation of treaties was more specific listing as requiring ratification treaties of peace, alliances against aggression and treaties of non-aggression. In addition to those are treaties which state that they come into force after ratification. Furthermore, ratification was made the exclusive responsibility of the Presidium of the Supreme Soviet of the USSR.

At the present time Soviet law adopted the regime which obtains in the world at large. Presidium acts as a collective head of the state, in a manner resembling the Swiss Federal Council. It ratifies treaties in the form of decrees, published in the official Gazette of the Supreme Soviet. Following ratification the text of the treaty itself is also published. The decree usually mentions that the treaty has been submitted by the Council of Ministers for ratification.

Sometimes (depending upon the nature of the treaty) the decree of ratification may also refer to the fact that the treaty was approved by the Council.²⁸ Sometimes the ratification decree refers to approval being given by the Foreign Affairs Committee of the Supreme Soviet.²⁹

If a treaty is purely technical in nature, such as consular convention,³⁰ the process of approval is confined to action by the Council of Ministers. If despite its technical character, it carries a political connotation, then the treaty's approval is the responsibility of the foreign affairs committee of the Supreme Soviet.³¹

It is obvious, however, that the *de facto* making of treaties is the responsibility of the Council of Ministers of the USSR. The ministry of foreign affairs is directly involved in all aspects of international relations, and its activities are part of the general responsibility of the Council.

Ratification is a two-stage process. First, the act of ratification of the treaty by the competent body of the state, follows directly the various consultations involved and the signal approval of the concerned government agencies. The second stage, consists of an exchange of the instruments of ratification, or a deposit of the instrument of ratification with the depositary government.

In Soviet practice the mere act of ratification, without this final act undertaken within the context of relations with the parties (or party) to the treaty, is not an expression of consent by the state, thereby binding it vis-à-vis the other parties to a treaty. Ratification, as an act of consent by parties to a treaty, is under the rule of international law, and the internal processes of the ratification procedure are without bearing upon the existence of international obligation for the concerned states. Consequently, the requirement of ratification is contingent upon stipulations in the treaty itself. As Mr. Tunkin, the Soviet member of the International Law Commission explained, "he did not consider that there were two kinds of full powers, one kind authorizing signature of a treaty coming into force on signature, and the other authorizing signature of a treaty requiring ratification. In the practice of his own country and others, the full powers might in both cases be identical, or they might be different. The answer to the question whether the treaty came into force on signature or required ratification depended upon provisions contained in the treaty itself."³²

Moreover, the viewpoint of the Soviet members of the International Law Commission was that ratification "was not the final act performed by the State in establishing its consent to be bound by a treaty. A change of government could occur between the time when a treaty was ratified and the time when the instruments of ratification were exchanged or deposited. If the new government did not wish to proceed with the matter, the State could not be regarded as bound by the terms of the treaty, because the final stage of consent on the international level had not been completed."³³

Furthermore, requirement of ratification was a matter of internal law and had nothing to do with either the form of treaties or their contents. Some

states ratified certain treaties, and others did not. Mr. Tunkin explained that "in practice, ratification was one of the modes of expressing a State's final consent to be bound by a treaty, but it was not the only one. It was for the constitution of each country to determine by whom the final consent of the State could be expressed and in what form. In current practice, many treaties were concluded merely by ministers and he did not believe that international law could prescribe to States the manner in which they might express their will to be bound by a treaty. It was for States themselves to decide through which organ, when and how they wished to express that will."³⁴

As to the procedure of ratification, Mr. Tunkin paid little attention to the form of needed requirements for this last stage of concluding an international agreement:

"An examination of existing practice showed wide variations in the procedures followed by States for ratification, accession, etc. Paragraph 1(a) surely referred to instruments as distinct from acts of ratification. The procedure might be determined in the treaty itself. The exchange of instruments of ratification and their deposit with the depositary might be regarded as the classical procedures, but there were others of more recent date, such as simple notification, sometimes by a *note verbale*, that a State had ratified or approved an international instrument; that procedure could be used, for example, for the recommendations and conventions of the International Labour Organization."³⁵

3. *Promulgation*

Treaties and international agreements are published in the Soviet official law gazette. The decree of August 22, 1924, provided that "Treaties, agreements and conventions concluded by the USSR with foreign states are published in the 'collection of Laws and Regulations of the Workers and Peasants' Government of the USSR in the following order:

"(a) Treaties, agreements and conventions calling for ratification by the government of the USSR or coming into force upon the exchange of notifications between the signatory states, are published only after the exchange of ratification or notification has taken place;

(b) Treaties, agreements and conventions which come into force immediately upon signing by the parties, or at certain time after the signing, or upon publication in the official organs of the USSR, are published upon conclusion.

Note. Treaties, agreements and conventions which are to be published are sent to the Department of Publication of Laws by the People's Commissariat of Foreign Affairs with the required visa of the People's Commissar or of his deputy, without which publication cannot take place."³⁶

The provisions of this decree were amended by the decree of September 10, 1926³⁷ which introduced a new division in respect to the material that was to

appear in the official law gazette. Treaties concluded by the Soviet Union were henceforth to be included in that part of the gazette which included the executive and administrative decisions of the Soviet government: "decrees of a legislative nature, with the exception of international treaties, agreements and conventions of the USSR, shall be published in the first section, and other decrees as well as international treaties, agreements, and conventions of the USSR in the second section. . ."

In 1938, the Official Law Gazette was replaced by the *Journal of the Supreme Soviet of the USSR*. The Journal is a record of all legislative activity which emanated from Soviet legislative bodies, including the Presidium. The Journal, moreover, contains international agreements, treaties, conventions and all other recorded acts encompassing such agreements. In 1958 the Presidium of the Supreme Soviet reexamined the question of the publication of the laws of the Soviet Union and adopted an appropriate decree concerning this.³⁸ According to the decree then, only ratified international agreements may be found in the *Journal of the Supreme Soviet*, while other agreements appear in the Official Gazette which publishes legislative acts of the Council of Ministers. They also appear in *Izvestia* and *Pravda*.

The Soviet Union registers its treaties under article 102 of the Charter of the United Nations. Soviet scholars have acknowledged that provisions of article 102 have their origin in article 18 of the League of Nations Covenant. This article in turn was itself influenced by the Soviet repudiation of secret treaties, secret diplomacy and the subsequent publication of the secret treaties between Russia with other major allied powers during the war.³⁹

4. Language

The Soviet practice as regards the language used in treaties and international agreements has gone through two clearly discernable stages. Initially, following reestablishment of diplomatic relations with other countries, treaties were made in the languages of the parties concerned. The Soviet government had not claimed for the Russian language a special position as a *lingua franca* in international diplomacy.

During that period also, the Soviet Union, since it began to participate increasingly in international conferences and in multilateral agreements, raised no objections against the use of French and English or both as official languages of conferences or as the languages of international agreements to which Soviet government was a party. Since the Soviet Union had joined the League of Nations, and the International Labor Organization, it still did not raise demands as regards recognition of Russian as one of the official languages of either of these organizations.

Even in bilateral agreements concluded during the interwar period, the Soviet Union had not insisted on Russian being one of the languages in which agreements were to be phrased. Frequently however, agreements are made in the languages of each of the parties, but no mention is actually

made as to which of the languages represents the authentic language of the agreement. On occasions, moreover, Soviet agreements of a particular period have been drafted in a language of another country or in a language that had gained a traditional position for such use in the particular country. The customs convention with Persia of March 10, 1929, for example, was concluded in French, while the convention with Japan, of January 20, 1925, regarding general principles of mutual relations, was concluded in English.

Since World War II the Soviet Union has changed its position in this regard. The new policy predicated upon the victory of the United Nations, the contribution of the Soviet military power to the defeat of the Axis Powers assured the recognition of Russian as one of the languages of international diplomatic intercourse. The Act of Unconditional Surrender of Germany Armed Forces signed in Berlin on May 8, 1945, was drawn up in English, Russian and German, and had only two authentic texts, viz the English and Russian texts. The peace treaties with Italy, Romania, Hungary, Bulgaria and Finland were drawn in French, English and Russian and also in the languages of the defeated nations. However, in the Italian treaty, only English and Russian were the official texts.

Russian is one of the official languages of the United Nations Organization and of its agencies.

At the Belgrade Conference in 1948 regarding the Danube question, French and Russian were used as working languages while English was also given the status of an official language.

At the same time, the Soviet Union has accepted the practice that English is to be used extensively as a *lingua franca* in international relations. Indeed, the USSR has been a party to international conventions that were prepared in an English text only.

Russian has furthermore become a language increasingly used in the diplomatic practices of the Socialist Commonwealth of Nations. The Warsaw Pact of May 14, 1955, was concluded in four languages: Russian, Polish, Czech and German. However, the December 14, 1959 Charter of the Council for Mutual Economic Aid which included the Soviet Union and all the other socialist states in Eastern Europe was made in the Russian only. Article XIV of the Charter provided that the official languages of the Council were to be all the languages of the countries members of the Council. However, Russian was declared to be the only working language. Similarly, Russian was the language of the Convention of the same date regarding the legal capacity, privileges and immunities of the Council for Mutual Economic Aid. Also the agreements regarding various questions connected with the location of the seat of the Council for Mutual Economic Aid in the Soviet Union, of December 7, 1961 was made in Russian only.

The publications of the socialist international organizations usually appear in more than one language. Sometimes, in addition to the languages of the socialist bloc, Russian, Chinese, and occasionally German, a western European language may be used, particularly when such an organization

serves as a communication channel with similar institutions in the West. Russian, however is the official language of all publications of socialist international organizations and other languages of the socialist countries, including Chinese are less frequently used.

5. *Reservations to International Agreements*

During the post-World War II period the Soviet Union used what was to become a key device in its relations, the reservations to its international agreement. By virtue of this device, the Soviet Union was able to participate in the work of international organizations, and in international conferences convened to draft multilateral agreements and to limit its commitment to the rule of law in its international relations.

Reservations to a treaty are defined in the *Juridicheskii slovar* as "... a declaration by means of which a state at the moment of appending the signature, ratification or accession, specifies certain conditions which enlarge or narrow the application of the treaty in relations between that state and other parties to the treaty."⁴⁰

The position of the Soviet members of the International Law Commission, which debated the law of treaties, was that reservations were a necessary institution because treaties should be the expression of the will of the parties. Reservations thus promoted the cooperation of states as it made possible the participation of these parties in international agreements, while at the same time being in opposition to those provisions which are acceptable to the majority of the particular conference convened to negotiate a treaty. It was, therefore, illogical to insist that the question of reservations by individual states be subject to the vote of the conference. There were two conditions that a Soviet member of the International Law Commission insisted on for the exercise of this right. First, reservations had to be compatible with the object and purpose of the treaty. Second, the right to make reservations was not to be excluded by the provisions of the treaty itself. A Soviet member of the International Law Commission also held that the states were free to accept or reject reservations, and moreover to attach to reservations made by one of the parties to the legal consequences they desired.

As Mr. Tunkin has put it: "The objecting state should be free to decide for itself what consequences it attached to its action; it might wish merely to state its position in regard to the reservations, without going so far as to preclude the entry into force of the treaty as between itself and the reserving state. It would be both correct in theory and advisable in practice to leave it to the objecting state to declare whether it wished to preclude the entry into force of the treaty as between itself and the reserving state."⁴¹ He added: "If current practice were taken into account and if reference were made to the advisory opinion of the International Court of Justice in the Reservations to the Genocide Convention Case and to General Assembly resolution 598 (VI), it would be found that the only rule on the subject was entirely

general, that in cases where the treaty was silent on the subject of reservations states could make reservations which were compatible with the object and purpose of the treaty, and that parties to the treaty might accept or reject reservations. Furthermore, the advisory opinion of the International Court implied that reservations should be accepted if they were compatible with the object and purpose of the treaty and that each state should decide for itself on the issue of compatibility."⁴²

In Soviet practice, reservations to a treaty are made at various stages of entering into the obligations set up by the treaty until its final terms are established. However, the right to make reservations with a binding effect upon the other parties does not extend beyond the moment of the final acceptance of the binding force of a treaty. The right of making reservations to the treaty is regarded as inherent in the right of sovereignty of an independent state. Technically, a reservation demonstrates the absence of agreement between the parties to an international agreement as regards the content of certain provisions in a treaty, while, at the same time, denoting an acceptance of the rest of the treaty's content.

According to the statistics assembled by a Soviet scholar during the period until January 1, 1959, the Soviet Union has made reservations to some thirty-four multilateral treaties.

The most frequent purpose of the reservations is to limit the binding force of provisions of the treaty with regard to some states, or in certain circumstances, or assure its application upon a condition of reciprocity. So, for instance, in the reservations to the so-called Geneva Protocol of June 17, 1925, the Soviet Union declared that it would not be bound by the provisions of the Protocol as regards those states that were not parties to the Protocol. In the second reservation, it declared that it would apply its provisions under a condition of reciprocity, and that the Protocol ceased to be binding with respect to those states whose armed forces did not respect the provisions of the Protocol.⁴³

One of the most important groups of reservations was that which rejected the compulsory jurisdiction of international judicial institutions in disputes arising between the parties of specific international agreements. The Soviet Union insisted that the submission of disputes involving the Soviet Union would, in each case, require a specific agreement on the part of the Soviet government.

On joining the League of Nations the Soviet Union made a reservation that the procedure for settling disputes, provided in Articles 12 and 13 of the Covenant of the League of Nations, would not apply retroactively to disputes and issues which arose before the USSR had joined the League. Another important reservation was that made by the Soviet Union on joining the Geneva Convention of April 20, 1929, for Suppression of Counterfeiting.⁴⁴

In its December 2, 1927, Declaration on Accession to the Protocol on the Prohibition of the Use of Suffocating, Poisonous and other Similar Gases and Bacteriological Means of Warfare of June 17, 1925, the Soviet

Union made the following reservations: "(1) that the Protocol obligates the Soviet government only with respect to states that signed and ratified it or that have finally adhered to it; and (2) that the Protocol would cease to be binding upon the government of the USSR with respect to any hostile state, the armed forces of which as well as the formal or factual allies would ignore the prohibition that constituted the subject of the Protocol."

During the post-war period similar reservations were made regarding the privileges and immunities of the United Nations in connection with the Convention of February 13, 1946.⁴⁵

The Soviet Union, the Ukraine and Byelorussia acceded to the convention with a reservation regarding the provision that (1) disputes arising out of the interpretation and application of the convention shall be referred to the International Court of Justice, unless the parties agree on another mode of settlement, and (2) in case of differences between the United Nations and a member, the Court shall be asked to give an advisory opinion on any question involved, and its opinion shall be accepted as decisive. The three states maintained that the consent of all parties to a dispute to submit the case to the Court should be required in every case. The other case of reservations regarding the compulsory jurisdiction of the International Court of Justice was the Genocide Convention of December 9, 1948. Here the USSR, Ukraine and Byelorussia stated that they did not consider the interpretation, application, and implementation of the convention should be referred for examination to the International Court of Justice at the request of any party to the dispute. The Soviet Union maintained that, in each case, the agreement of all parties to the dispute was essential for its submission to the International Court for decision. In addition, the three states considered that the convention should also apply to non-self-governing territories.⁴⁶

Reservations have also been made in order to maintain the jurisdictional immunity of Soviet government owned merchant shipping. In the reservations made to the Geneva Convention of December 12, 1949, for the amelioration of the condition of wounded and sick of armed forces in the field, the USSR declared that it "will not recognize the validity of request, of the Detaining Power to a neutral state or to a humanitarian organization, to undertake the functions performed by a Protecting Power, unless the consent of the Government of the country of which the protected persons are nationals has been obtained."⁴⁷

On various occasions the Soviet government not only made reservations, but also stated what the legal consequences of these reservations were considered to be in terms of the provisions of particular multilateral international agreements. The ratification of the Convention on Political Rights of Women, of March 31, 1953, by the USSR, Ukraine and Byelorussia was made with the reservations that the three states disagreed with Article 7 of the convention, viz., that the juridical effect of a reservation was to make the convention inoperative as between the state making the reservation and any other state which did not accept the reservation. The three states instead

expressed the view that a reservation affected only that part of the convention to which it had been attached, leaving the remainder operative between the states who were parties to the convention. Furthermore, the three states reserved their rights, as regards the submission of their disputes to the compulsory jurisdiction, of the International Court of Justice for adjudication, and declared that this could take place if a prior agreement was obtained in each individual case.⁴⁸

On various occasions the Soviet government also made reservations to the effect that subsequent ratification would be required for a treaty to be valid.⁴⁹

The Soviet practice of making reservations to multilateral treaties and conventions has been objected to by some participating governments. These objections leading in the final analysis to prolonged discussions in the United Nations General Assembly (fifth session). The discussions involved various aspects of the legal force of declared reservations, their effect on relations with other states, and their impact upon the legal force of the treaty or convention concerned. The specific occasion that precipitated the discussion in the General Assembly concerned the Soviet reservations to the Convention on Genocide. The report of the Secretary-General which introduced the problem to the General Assembly stated that, while it was universally recognized that the consent of the other governments concerned had to be sought before they could be bound by the terms of such a reservation, there had been no unanimity either as to the procedure to be followed by a depositary in obtaining the necessary consent or as to the legal effect of a state's objecting to such a reservation.

The question the Secretary-General stated had acquired a current importance in connection with the Convention on the Prevention and Punishment of the Crime of Genocide. According to Article XIII of that convention, it would come into force on the nineteenth day after the date of deposit of the twentieth instrument of ratification or accession. On the day of receiving the twentieth instrument, the Secretary-General was to draw up a process-verbal to that effect, and the receipt of the twentieth instrument was to be expected at any time. A number of states, however, had made reservations as to various articles of the convention, because of certain objections to substantive portions of the convention. It consequently appeared to the Secretary-General that the legal effect of objections to reservations would require an early determination in order to establish whether states making reservations to which objections had been raised were to be counted among those necessary to permit the promulgation of the convention.

The matter was further discussed in the Sixth Committee and, eventually, referred again to the General Assembly. The General Assembly decided to seek an advisory opinion from the International Court of Justice regarding the effect of the reservations made by the parties to an international agreement as regards their relations with other parties to such an international agreement. At the same time, the General Assembly also invited the Inter-

national Law Commission to study, in the course of its work on the codification of the law of treaties, the question of reservations to multilateral conventions from the viewpoint both of codification and the progressive development of international law. Moreover, the General Assembly requested the International Law Commission to give priority to this study and that its report should especially focus upon the multilateral conventions of which the Secretary-General was the depositary.⁵⁰

The International Court of Justice in its opinion upheld the Soviet point of view:⁵¹ "It is well established that in its treaty relations a State cannot be bound without its consent, and that consequently no reservation can be effective against any State without its agreement thereto. It is also a generally recognized principle that a multilateral convention is the result of an agreement freely concluded upon its clauses and that consequently none of the contracting parties is entitled to frustrate or impair, by means of unilateral decisions or particular agreements, the purpose and *raison d'être* of the convention. To this principle was linked the notion of the integrity of the convention as adopted, a notion which in its traditional concept involved the proposition that no reservation was valid unless it was accepted by all the contracting parties without exception, as would have been the case if it had been stated during the negotiations."

This concept, the Court stated, inspired as it was by the notion of contracts, was of undisputed value as a principle; but as regards the Genocide Convention its application was made more flexible by a variety of circumstances, including the universal character of the United Nations, under whose auspices the convention was concluded, and also a broad degree of participation envisaged by the convention. "Wide participation in conventions of this type had already," it was held, "given rise to greater flexibility in practice." Consequently the Court held that "A State which has made and maintained a reservation which has been objected to by one or more of the parties to the Convention but not by the others, can be regarded as being a party to the Convention if the reservation is compatible with the object and purpose of the Convention; otherwise, that State cannot be regarded as being a party to the Convention."

"If a party to the Convention objects to a reservation which it considers to be incompatible with the object and purpose of the Convention it can in fact consider that the reserving State is not a party to the Convention."⁵²

In terms of legal principle, therefore, the Soviet Union, in spite of its fundamental opposition to the method chosen by the General Assembly to solve the dilemma, had been justified in using the device of reservations in its treaty practice. It is also obvious that the Soviet practice of reservations to multilateral treaties, as regards the obligation to submit disputes for resolution by the decision of the International Court of Justice, raises a question as to the function of treaty law in the modern community. In the Soviet view the techniques of the rule of law in the international community are still closely linked with the institution of the national state, with its

claims to sovereignty limited exclusively by the general postulates of the international legal order, and not by supranational institutions. It is through the states that international law fulfills its functions, and the action of international institutions is only supplementary to the will of the states.

III. THE END OF TREATIES

The life of a treaty is determined by a number of factors. In the first place the treaty comes to an end at the end of the term for which it was concluded. It is also terminated by execution; and by mutual consent. All these modes by which treaties are terminated are used by the Soviet Union, and in this respect Soviet practice differs but little from the practice of other states. Examples of expiration of treaties through desuetude may be found in Soviet treaty relations with the socialist countries concluded during the period preceding their conversion to the socialist form of government and their membership in the Socialist Commonwealth of Nations. For instance, on March 25, 1935, the Soviet Union concluded a treaty for the protection of industrial property with Czechoslovakia. This treaty was not denounced or replaced, but it is no longer compatible with the new relationship established by Czechoslovakia's membership in the socialist camp, or with the new techniques of technical, scientific and cultural cooperation practiced between its members. The Soviet practice in connection with the termination of treaties deserves to be closely examined in connection with two classes of events: those events which terminate treaties automatically without exception, and those which authorize their denunciation.

A. Automatic Termination of Treaties

1. Incorporation of Independent States into the Soviet Union

Since the October revolution (1917), the history of the Soviet Union has been marked by territorial expansion, through incorporation into the Soviet Union of a number of independent states, which had, during their independence, concluded various treaties and agreements with the Soviet Union. This incorporation terminated international treaties concluded prior to the incorporation, including those which contained express or implied recognition of the independent status of those countries.

2. Annexation of Parts of Neighboring States

A different kind of situation engendered the problems regarding the annexation of parts of neighboring states without resort to war, as in the respective cases of Poland and Czechoslovakia.

In conclusion, the acquisition of territories seems to terminate all those agreements which were designed to control relations between the Soviet Union and former territorial sovereigns, with regard to the incorporated territories.

3. *Extinction of a State*

Following the German attack on Poland in 1939, and its partial occupation by the German armies, the Soviet government declared that Poland had ceased to exist, which liberated the Soviet Union from duties imposed on the Soviet Union by rules of international law regarding neutrality. It also annulled international treaties between the two countries.

The eclipse of states and the end of treaties were at times more of an ad hoc measure, not destined for permanency, so that, when circumstances warranted, the Soviet Union would reconsider the action of annulment of its obligation with regard to the extinct states and declare it to be without legal effect.

On the eve of World War II, Germany liquidated Austria and Czechoslovakia, and divided, in cooperation with the Soviet Union, Poland. After the War all three of these countries became reestablished. In the case of Poland, the Soviet Union participated in the act of conquest, while in the case of Austria and Czechoslovakia, the Soviet Union recognized the territorial and political rearrangements imposed by Germany. In respect of Austria, following the Anschluss of Austria to Germany on March 13, 1938, the Soviet Union closed Soviet diplomatic and consular representatives in Vienna and Austrian diplomatic offices in Moscow, and indeed handed over the Austrian premises to Germany. On September 1, 1939, the Soviet government concluded an agreement with the German Reich by which it extended the validity of the trade and clearing agreement to the territory of Austria. Following the German attack upon the Soviet Union, the Soviet Union reversed its position. On November 1, 1943, it joined with the British and United States government in a declaration which declared Anschluss as void and illegal and that one of the purposes of the war was to liberate Austria from German occupation.

On April 29, 1945, the USSR announced its recognition of the Provisional Government of Austria, and on October 20, 1945, the two governments exchanged notes on the reestablishment of diplomatic relations.

Following a lengthy period of occupation, the United States, Great Britain, Soviet Union and France concluded the State Treaty with the Austrian government for the reestablishment of an independent and democratic Austria.⁵³

None of these documents dealt with the effect of the chain of events beginning with the Anschluss and ending with the 1955 Treaty on Austrian treaties with other powers, and specifically on treaties concluded with the Soviet Union. At any rate, the Austrian case seems to indicate that the

forcible incorporation of Austria was recognized by the Soviet Union, and during that time it considered it possible to extend the validity of its agreements with Germany to the Austrian territory. At the same time, it was also clear that the lapse of time and the intervening change in the political situation in Europe and Austria, in particular, made most of the Austrian treaties obsolete. This seems to be the principal reason that none of the powers who were parties to the State Treaty of 1955 were concerned with the prewar treaties.

The case of Czechoslovakia is simpler. Here the Soviet Union recognized the effects of the March 15, 1939, Munich agreement and German occupation of Bohemia. The Soviet government requested that the Czechoslovak embassy in Moscow be closed and that its staff leave the country. The Soviet Union also recognized *de jure* the State of Slovakia and accepted the incorporation of the Sub-Carpathian Ruthenia into Hungary. Finally, the Secret Protocol to the August 23, 1939, non-aggression treaty with Germany (Molotov-Ribbentov Pact) assigned the entire area west of the future demarcation line, which was to partition Poland, to the German sphere of influence.

The Soviet-Czechoslovak agreements concluded following the German attack upon the Soviet Union (the Agreement of July 18, 1941, and the Treaty of Alliance of December 12, 1943) throw no light upon the legal force of the Soviet-Czechoslovak treaties concluded prior to the German invasion of Czechoslovakia. On several occasions Soviet scholars have asserted that some of the Soviet-Czechoslovak treaties are still in force, mentioning in particular the agreement of March 25, 1935, concerning reciprocal protection of industrial property rights.

The case of Poland is not any more illuminating. The Soviet Union had a number of agreements and treaties, including the Treaty of Peace concluded in Riga on March 18, 1921, and the non-aggression Pact of July 25, 1932, with Poland. The force of these treaties was reaffirmed by the Soviet government in November 1938. In fact, the *Tass* communique of November 27, 1938, stated: "It was established during a series of conversations, which the People's Commissar for Foreign Affairs, Comrade Litvinov and the Polish Ambassador M. Grzybowski, have recently held that: 1. Relation between the Polish Peoples' Republic and the USSR shall continue to be founded in their entirety on all existing treaties, including the non-aggression treaty signed in 1932; and that this treaty, concluded for five years and extended until 1945, provides a sufficiently broad guarantee of the inviolability of peaceful relations between the two states."⁵⁴ German victories in Poland spared the Soviet government the necessity of formal denunciation of Polish-Soviet treaties. In his radio speech of September 17, 1939, Soviet Foreign Commissar Molotov stated: "The Polish state and its government have *de facto* ceased to exist. In consequence of this situation treaties concluded between the Soviet Union and Poland have become null and void . . ."⁵⁵

In the treaty of July 30, 1941, with Poland, the Soviet government recognized that its treaties with Germany on the partition of Poland had been invalidated, and agreed to reestablish diplomatic relations with the Polish government. Furthermore, it established a platform for a wartime alliance with Poland. Hence, the Polish government reoccupied the premises of its embassy in Moscow. However, the status of the prewar agreements between the Soviet Union and the Polish Republic was never mentioned.

In 1931 Japan occupied the Chinese province of Manchuria and set it up as a separate state, Manchukuo, under a puppet government. On March 23, 1935, the government of Manchuria concluded with the Soviet Union an agreement which transferred to Manchukuo the rights of the USSR to the Chinese Eastern Railway. Prior to the USSR entry into the war with Japan, the Soviet government exacted from the allies and from China the return to the Soviet Union of the Chinese Eastern Railway, while Manchuria itself was returned to Chinese sovereignty. It seems that in this case extinction of Manchukuo annulled the agreement of 1935.

4. *War*

Soviet practice suggests that war annuls treaties and international agreements. Following World War I, the Soviet Union made no attempt to re-introduce treaties in force between Russia and the Central powers.

The question of the life of prewar treaties was dealt with in the post-World War II peace treaties with Bulgaria, Hungary, Italy, Rumania and Finland. The Peace Treaties accorded the Allied and Associated Powers individually, and within six months of the coming into force of the Peace Treaties, the right to notify the respective defeated countries what prewar bilateral treaties they wished to revive.⁵⁶

B. *Denunciation of Treaties*

1. *Authority to Denounce*

It is a standard practice in Soviet treaties, particularly in those concluded for an indefinite or lengthy period of time, to provide for their denunciation. A typical example of such a treaty was the Soviet-British Soviet Treaty of Alliance of May 26, 1942, concluded for twenty years. Provision was made for it to be terminated by twelve months' notice before the twenty-year period expired. Failure to denounce such a treaty extends its validity indefinitely subject to the proviso that parties may terminate it at all times by giving twelve months' notice.

The Soviet Union has practiced both a general and specific denunciation of treaties since its inception. And yet, there were no regulations in the Soviet legal system establishing authority or indeed even a procedure for the

denunciation of treaties. In 1927 an amendment to the decree of May 21, 1925, provided that treaties and agreements shall be denounced by that organ which ratified or confirmed them (the Central Executive Committee or the Council of People's Commissars respectively). Following the enactment of the Constitution of 1936 the question was dealt with anew by the Law of August 20, 1938, on the Procedure of Ratification and Denunciation of International Treaties, which incidentally also provided for the amendment of Article 14, of the 1936 Constitution, to include among the powers of the Presidium of the Supreme Soviet the power to denounce treaties.

The 1938 Law, however, dealt exclusively with the denunciation of treaties ratified by the Presidium of the Supreme Soviet. It must be presumed that the 1927 decree, inasmuch as it dealt with the denunciation of treaties confirmed by the Council of Ministers of the USSR, remained in force.

2. Soviet Practice of Denouncing Treaties

Soviet practice of denouncing treaties was motivated by the conviction that, owing to changes in the circumstances, the treaty or international agreement no longer served its original purpose. Treaties and international agreements, by their very functions, limit freedom to act, and serve to coordinate political action of their participants along non-conflicting lines, either requiring abstention from undertaking an action prohibited in terms of the agreements, or requiring cooperation in achieving certain goals mutually desired by the parties. Or change in a political or economic situation would be sufficient basis for the Soviet government to abrogate a treaty which seeks to limit its freedom of action. The classification which follows is not a legal classification but suggests circumstances which have in the past caused the Soviet government to denounce a treaty or an international agreement.

a. Change in the Balance of Power

A classical example in this category of grounds for the abrogation of a treaty which is no longer considered to be useful is found in the abrogation of the Treaty of Brest-Litvsk with Germany and her allies, following the German defeat in the West and the establishment of the republican regime in Germany. This fact deprived the Brest-Litovsk Treaty of its usefulness for the Bolshevik regime. The main functions of the treaty was to stop the advance of German armies and to preserve the revolution. After the collapse of the Germans the treaty was no longer needed, and the Soviet government sought to regain, by repeal of the treaty, freedom of action in relation to the occupied territories, which included the Ukraine, Baltic republics and Russian Poland. However, the Soviet government still desired to preserve those advantages which the Brest-Litvsk Treaty represented, namely the maintenance of diplomatic relations with Germany, and to this end called upon the new regime to reestablish the Soviet diplomatic mission which had been expelled in the last weeks of the imperial regime.⁵⁷

While in the Fall of 1918 the collapse of German power was the element of change in Eastern Europe which absolved the Soviet government from the obligations assumed in the Brest-Litovsk Treaty, the rebirth of German military might and the outbreak of the Second World War in the Fall of 1939 again produced a change in the balance of power which released the Soviet Union from various international obligations which were an expression of the Soviet interest in maintaining the status quo in Central Europe. In his note of September 17, 1939, to the Polish Ambassador in Moscow, Molotov asserted that "The Polish-German war has made apparent the internal bankruptcy of the Polish state. During ten days of military operations Poland has lost all its industrial regions and its cultural centers. The Polish government has fallen and shows no signs of life. This means that the Polish state and its government have ceased, in fact, to exist. Likewise, the treaties concluded by the USSR and Poland lost force. Poland, left to itself and without leadership, has been turned into a convenient field for any eventuality and unexpected occurrence, which could create a threat for the USSR. Therefore, having been neutral up to now, the Soviet government can no longer be neutral to these facts."⁵⁸

The situations created by the change in the balance of power and the outbreak of World War II again was changed by the German attack upon the Soviet Union in June 1941. The Soviet Union joined the Grand Alliance of the Democratic Powers and one of its first acts was an agreement with the Polish government-in-exile (July 30, 1941), which declared that the Soviet-German agreements of 1939, concerning territorial changes in Poland, had lost their validity. At the time when the Soviet-Polish agreement was signed, its terms were understood to imply that the Soviet Union had renounced its acquisitions in Poland. However, when, at the end of the war, the Soviet Union found itself in the dominant position in Eastern Europe, the new balance there denuded the Soviet-Polish agreement of July 30, 1941, of whatever meaning it might again have had, and the Soviet Union as a result retained possession of Eastern Poland.

b. Denunciation of Treaties Preliminary to Aggression

The change in the balance of power in Europe was, on several occasions, exploited by the Soviet government using armed aggression for territorial conquest. The collapse of Germany of 1918 encouraged the Soviet government to undertake various military expeditions in order to regain some of the territories which had been part of the Russian Empire and which had seceded from Russia in order to form their own states. During the initial months of its existence, the Soviet government recognized these states and even concluded treaties with them. Some of these states were able to resist Soviet expansion and preserved their independence. In due course all of these border states upon the Soviet initiative, entered into non-aggression pacts, whereby they were guaranteed their territorial integrity and were provided with a mechanism for the peaceful settlement of their disputes.

The cases of Finland and the three Baltic States, had common features. The case of Finland is a typical example of the manner in which the Soviet Union treated the non-aggression treaties it had made with the four countries concerned.

In its note of November 28, 1939, to the Finnish government, the Soviet government no longer considered itself bound by the Soviet-Finnish Non-Aggression Pact of January 21, 1932, because of alleged violations by Finland. The note stated: "The Government of the USSR cannot be reconciled with the fact that the Non-Aggression Pact was violated by one party, while the other side is pledged to fulfill it. In view of this, the Soviet Government feels compelled to declare that, as of this date, it considers itself free from obligations accepted by it on the strength of the Non-Aggression Pact concluded between the USSR and Finland, which is being systematically violated by the Government of Finland."⁵⁹ The denunciation of the treaty was the result of the Soviet-German agreement, which assigned Finland to the Soviet sphere of influence.⁶⁰

The Soviet Declaration of November 28, 1939, was preceded by long negotiations with Finland, which centered upon the Soviet demands for territorial cessions and the exchange of territory which would give it the control of certain Finnish fortifications across the so-called Finnish Isthmus. At that time the alleged violations of the non-aggression treaty by the Finnish government were never mentioned.

Another example of denunciation prior to planned aggression was the Soviet Declaration of April 5, 1945, which denounced the Soviet-Japanese Pact of Neutrality of April 13, 1941, which the Soviet Union had concluded while still an ostensible ally of Nazi Germany, and to which it adhered despite the Japanese attack on Pearl Harbor on December 7, 1941. This act brought Japan into a state of war with the United States and its allies. In denouncing the treaty, the Soviet government referred to the fact that Japan had become an active participant in the Rome-Berlin-Tokyo triangle and had entered the war against the allies of the Soviet Union, the United States and Great Britain. The real reason, however, for denouncing the Neutrality Treaty was that, with the defeat of Germany, the Soviet Union made another agreement at the Conference in Crimea to participate in the war against Japan. So, again, there was a basic change in the balance of forces, due mainly to the fact that the once prevalent German threat had been removed and the Soviet government felt free to start military action in the Far East.⁶¹

c. Denunciation of Treaties as Means of Pressure

On certain occasions, the Soviet Union has denounced treaties concluded with other countries in order to force concessions, or to protest against their policy.

A typical example in this respect was the termination of the Brest-Litovsk Treaty with Turkey on September 20, 1918. The purpose of the Brest-Litovsk

Treaty was to stop the advance of the armies of the Central Powers into Russia. The treaty was extremely onerous, and was aimed at the exclusion of the Russian influence in Eastern and Central Europe.

Nevertheless, the Brest-Litovsk treaties with Central Powers were of immediate advantage to the Bolsheviks, because they permitted the Bolshevik regime to survive and to continue the internal struggle for power. However, Turkey continued to advance and seize Baku, thus denying the Soviet regime some of the advantages of the Brest-Litovsk Treaty which it had hoped to receive. The Soviet Union's reaction was to terminate unilaterally the treaty. In its act of denunciation, the Soviet government stated that Turkey "contrary to the provisions of article 4 of the Treaty, which guaranteed to district of Kars, Ardahan and Batum the right to determine their future in agreement with the neighboring countries, and in particular Turkey, has occupied by force these districts and in particular the City of Baku, thus committing an act of aggression against the Russian Republic."⁶²

At the Conference in Crimea, the Soviet Union extracted from the other main allied powers a promise to establish a new regime for the Turkish Straits. It then proceeded to establish a new regime in direct cooperation with Turkey, demanding concessions and a return of some of the territories which Turkey had acquired following World War I. As one of the pressures exerted upon Turkey, the Soviet Union denounced on April 5, 1945, its Friendship and Neutrality Treaty with Turkey of December 17, 1925.⁶³

Soviet-Allied relations with regard to Germany prompted the Soviet government also to denounce formally the Soviet-British Mutual Assistance Treaty of May 26, 1942, and the Soviet-French Mutual Assistance Treaty of December 10, 1944, on the grounds that both governments had violated these treaties by their actions and support for the remilitarization of West Germany and its inclusion into the North Atlantic Treaty Organization and the European Economic Community, both organizations being directed against the Soviet Union.⁶⁴

Denunciation, in this connection, was also employed by the Soviet government during the second Berlin crisis which lasted from November 1958 to the end of the Geneva Conference (July 13-August 5, 1959). The Soviet Union demanded that the Berlin regime be liquidated and the city handed to the authorities of the GDR. In order to enforce its demands, the Soviet Union denounced the September 12, 1944 Protocol which had established an administrative regime for the Greater Berlin Area. The Soviet government moreover charged that, contrary to the provisions of the Potsdam agreement, the Western allies had remilitarized West Germany: "Now that the Western Powers have begun to arm West Germany, and turn it into an instrument of their policy directed against the Soviet Union, the very essence of this erstwhile Allied agreement on Berlin has disappeared. It was violated by three of its signatories, which began to use it against a fourth signatory, i.e., against the Soviet Union. It would be ridiculous to expect that in such a situation the Soviet Union, or any other self-respecting

state in its place, would pretend not to notice the changes which occurred . . . The Soviet government can no longer consider itself bound by that part of the Allied agreements on Germany that has assumed an inequitable character and is being used for the purpose of maintaining the occupation regime in West Berlin and interfering in the internal affairs of the GDR.

"In this connection, the Government of the USSR hereby notifies the United States Government that the Soviet Union regards as null and void the 'Protocol' of the Agreement Between the Governments of the Union of Soviet Socialist Republics, the United States of America, and the United Kingdom on the zones of occupation in Germany and on the administration of Greater Berlin of September 12, 1944, and the related supplementary agreements, including the agreement on the control machinery in Germany, concluded between the governments of the USSR, the USA, Great Britain and France in May 1945, i.e., the agreements that were intended to be in effect during the first years after the capitulation of Germany."⁶⁵

In the final analysis, however, the Geneva discussions of the Foreign Ministers from May 11 to June 20, and from July 13 to August 5, 1959, brought no solution to the disagreement, except that the status quo under these agreements which had been formally denounced was continued.

Following the Yugoslav defection from the Cominform in 1948, the Soviet Union, and the other socialist countries who followed her example, denounced their treaties and various international agreements with Yugoslavia.

A Soviet note of September 28, 1949, informed the Yugoslav government that the Soviet government no longer considered itself bound by the provision of the Soviet-Yugoslav Treaty of Friendship, Mutual Assistance and Post-War Cooperation of April 11, 1945. "In the course of the trial, which ended in Budapest on September 24 (1949), of the State criminal and spy Rajk and his accomplices . . . it was revealed that the Yugoslav government had for a long time been conducting hostile, subversive activity against the Soviet Union . . . The trial in Budapest has also shown that the leaders of the Yugoslav governments have conducted and continue their hostile and subversive work against the USSR not only upon their own initiative, but also on direct instructions from foreign imperialist circles. The facts disclosed at this trial have shown that the present Yugoslav government is fully dependent on foreign imperialist circles and that it has become an instrument of their aggressive policy . . . All these facts show that the Treaty of Friendship, Mutual Assistance and Post-War Cooperation between the USSR and Yugoslavia has been rudely trampled upon and torn to pieces by the present Yugoslav government . . ."⁶⁶

d. *Soviet Practice of Denouncing Treaties and Clausula Rebus sic Stantibus*

Legal justification for the Soviet practice of denouncing international treaties may be reduced to two principal reasons. The most frequently used reason is predicated upon the charge that the other partner has violated the treaty, and therefore the Soviet Union is unable to rely anymore on the

treaty provisions. The other reason is that events, beyond the control of the Soviet Union, have deprived the treaty of its legal force, for instance, the extinction of the other party. The nature of these arguments cannot obscure the fact that the real motivation for the Soviet denunciation is based on the fact that treaties in question serve their purpose no longer due to the intervening change in the political situation. From a broad perspective, the Soviet practice of denouncing treaties with other countries may be reduced to situations in which *clausula rebus sic stantibus* could explain Soviet behavioral patterns in this regard.

Soviet reluctance to use the principle of *rebus stantibus* as justification for denouncing treaties lies in the fact that as a legal argument *clausula rebus sic stantibus* is a weak argument, while a charge of violations of treaties by the other side is legalistically, at least, impeccable.

IV. TREATIES IN THE SOVIET LEGAL SYSTEM

The conflict of authority between the rules of different order and origin is, in the Soviet Union, reduced to a conflict between the provisions of international agreements and federal legislation, which, in the Soviet Union, is superior to all other types of legislation. In this connection, the enactment of the Principles of Civil Legislation of 1961 provided a rule for the guidance of Soviet courts, and a similar rule was also enacted in the Principles of Civil Procedure of 1961. Section 129 of the Principles of Civil Legislation of 1961 ruled that:

“Rules laid down in an international treaty or agreement to which the USSR is a party are to be applied in preference to different rules otherwise applicable under Soviet Civil Legislation.

“The same proposition applies to the territory of a Union Republic, where such republic is a party to an international treaty or agreement which provides rules different from those laid down in its civil legislation.”

The corresponding Section 64 of the Principles of Civil Procedure of 1961 stated that:

“In those cases where other rules are laid down by an international treaty or convention to which the USSR is a party such rules will apply instead of those contained in the present Principles.

“In the same way, rules laid down in an international treaty or convention to which a Union Republic is a party are applied instead of those provided in the legislation on civil procedure of such Republic.”

These new enactments cannot pretend to provide a general rule for the entire legal system of the Soviet Union. They are, however, of broader application than may appear at first. It must be realized that civil law in Soviet terminology includes all situations in which either Soviet juristic entities (socialist organizations), or government agencies, which are a part of the administrative set-up in the Soviet Union, appear as managers of

government property. In this sense, they include a great part of that which in a more traditional legal system would be classified as part of the administrative law. According to Article 3, paragraph 2 of the Principles of Civil Legislation of 1961:

"The civil legislation of the Soviet Union regulates, . . . relations between socialist bodies with regard to deliveries of products and capital construction, State purchases or agricultural produce from collective farms and State farms, the relations of organization of rail, sea, river, air, and pipe-line transport, communications and credit institutions with their clients and among themselves, State insurance matters, relationships arising in connection with discoveries, inventions and proposals for rationalisation, and also other relations, the regulation of which is assigned by the Constitution of the USSR and the present principles to the competence of the USSR. The legislation of the USSR may assign to the legislation of the Union. Republics the decision of questions in connection with such relations.

Foreign trade relations are governed by the special foreign trade legislation of the USSR and by the general civil legislation of the USSR and the Union Republics."

The principle of the precedence of an international treaty when in conflict with a positive rule of the international Soviet law, whether federal or republican, has also been given effect on other occasions. On September 12, 1958, the Presidium of the Supreme Soviet adopted a decree on the execution of court decisions of countries with whom the Soviet Union had concluded legal assistance treaties. It listed Bulgaria, the German Democratic Republic, the Korean People's Republic, Poland, Rumania and Czechoslovakia. The application of this decree was further extended to decisions of Albanian, Hungarian and Mongolian courts by a decree of December 20, 1958. These two decrees have established a simpler method of giving effect to foreign decisions, than that provided by the general provisions.

On June 19, 1959, the Supreme Court of the USSR sitting in a plenary session issued an instruction concerning the enforcement of the two decrees. This instruction filled in the necessary details regarding the procedure to be followed in requests for legal assistance by the authorities of the contracting countries. It also added that:

"In those cases, where, in international agreements, a different order of communication was provided for than that prescribed above, the provisions of the international agreement in force between the USSR and another country shall prevail."

Decrees of the Presidium and the instruction of the Supreme Court just quoted continue the practice which seems to have been well established in previous years. Similar instructions were issued earlier on at least two occasions in connection with the legal aid agreements concluded with other countries—March 3, 1950 and April 6, 1951.

A similar set of regulations was issued in 1951 in connection with the enforcement of agreements between the railway administrations of a

number of socialist countries. According to the Supreme Court of the Soviet Union, the international transport of goods and persons is no longer subject to local rules and in particular to the provisions of the Statute of the Railways of the USSR, but to the provisions of the agreement. The same also applies to international air transport.

"Litigation between government organizations . . . and agencies of railway and air transport . . . resulting from contracts of international transport of goods, are decided in accordance with international agreements."

However, it is not clear on which principle international treaties and agreements have precedence over the statutes in force. Are they a superior legal rule, which cannot be replaced except by treaty, or abrogated in a manner provided for the termination of treaties? Or are they a *lex specialis*, which creates an exception to a more general law, and which may be replaced by another *lex specialis*, either a treaty or an internal statute? Soviet theory and practice give no answer to these problems.

The error of the approach illustrated by the two questions formulated above is that they seek an answer to the nature of the precedence of international treaties over the internal statute in purely legal terms.

In practice, Soviet courts will be guided by the material which they find in their law gazettes without questioning its relationship and legal force, and by the advice of the supreme tribunals of the Soviet Union. Their position will reflect the general reluctance of courts in countries of the Roman law tradition to examine the statute, or any other item of positive law as to its binding force, if the provision in question is formally in order.^{66a}

V. NEW PRINCIPLES AND OLD PRACTICE

At its beginning, and consistently since that time, the Soviet regime has claimed that in its relations with other states it has always been motivated by high principles of justice and a respect for the rights and equality of other nations. Indeed, Soviet scholars and leaders formulated various doctrines, some of them all-embracing, such as the principles of peaceful coexistence, others more specific, excluding the use of force, perfidious methods of conspiracy (secret diplomacy) in international relations, and the exploitation of a dominant position by more powerful states in their relations with their weaker neighbors. In the area of treaty relations, three such doctrines are of paramount importance: repudiation of secret treaties, the practice of unequal treaties, and the use of force in settling treaty disputes or other conflicts of interests.

A. Secret Treaties

The new regime produced by the October 1917 revolution in its first act of government, the Decree on Peace, declared that, in its relations with other countries, it would resort to open diplomacy: "The government repeals secret diplomacy, expressing on its part a firm decision to conduct all its negotiations openly, before all the people, commencing immediately with a full publication of secret agreements, either affirmed or concluded by the government of landlords and of the capitalists . . . The content of those secret agreements, inasmuch as their purpose is to procure advantages and privileges for the landlords and capitalists, to uphold and expand annexations of the Great Russians, the government repeals unconditionally."

The promise of open diplomacy and of open treaties was never taken seriously, and the Soviet government discovered quickly the usefulness of secret agreements, both in relations with the other Soviet republics which emerged from the revolution, and in relations with other countries. The Calendar of Soviet treaties contains a substantial list of secret treaties. According to the Calendar, the Soviet Peace Treaty with Georgia, of May 7, 1920, included a secret annex defining the position of the Communist Party in Georgia.⁶⁷ During the post-World War I period the Soviet government concluded a series of secret agreements with Germany to arrange for military cooperation in the development of weapons and of her war industry which had been denied to Germany under the Treaty of Versailles regime.⁶⁸

The Soviet Union again resorted to secret agreements on the eve and also during World War II. The first of these was a secret Protocol to the Treaty of Non-Agression Between the USSR and Germany of August 23, 1939, which provided for the partition of Poland. On August 26, 1939, a confidential Protocol between the USSR and Germany established the rate of exchange of the Reichsmark in Soviet-German trade. The agreement on the partition of Poland was followed by the Treaty of Friendship Between the Soviet Union and Germany of September 28, 1939, which confirmed the annexation of parts of Poland into the Soviet Union and Germany. This treaty included one confidential and two secret Protocols. Simultaneously, the two partners concluded a secret agreement concerning the exchange of ethnic Germans for Ukrainians and Byelorussians from the respective parts of Poland. Also on the same date, the Soviet Union and Germany signed a Protocol concerning the assignment of Lithuania to the Soviet sphere of influence, in exchange for certain parts of Poland, which went to the German sphere of influence. Furthermore, on the same day, the Soviet Union and Germany agreed by a secret Protocol to cooperate in the suppression of resistance in Poland.⁶⁹

From the same period date secret clauses attached to the Soviet-Estonian Pact of Mutual Assistance, which determined the size of the Soviet garrison in Estonia, and the use of the Port of Tallin by the USSR.⁷⁰

The wartime collaboration between the Soviet Union and the Western

Allies produced only one known instance of a secret agreement. This agreement was in respect of the entry of the Soviet Union into the war against Japan and was made during the Yalta Conference of February 1945.⁷¹

A full record of treaties and agreements between the Soviet Union and communist governments of the Eastern European satellites prior to the death of Stalin is not as yet available. These treaties, however, pertain mainly to the field of economic cooperation between the Soviet Union and other communist governments. One of the major agreements which, although announced, still has not been published is the secret Protocol establishing the Council of Mutual Economic Aid of January 24, 1949. It should be noted, however, that the nature of some of the dealings between the Soviet Union and other communist countries in Eastern Europe is sometimes disclosed. The post-Stalin upheaval in Eastern Europe brought about the redefinition of mutual economic obligations, and moreover a Soviet withdrawal from controlling positions in the economy of Eastern European countries, in addition to a readjustment of the mutual claims resulting from the economic exploitation of the Eastern European countries by the Soviet Union.⁷²

B. *Unequal Treaties*

The original context in which the issue of unequal treaties was introduced by the Soviet leadership was to correct past wrongs. Russian imperial policy was based on territorial expansion, seeking economic and security advantages, and resorting to the use of force in order to gain a privileged position at the expense of weaker nations. This, in particular, applied to imperial Russia's relations with the oriental nations. In its quest to gain a sympathetic attitude, on the part of the Turks, Persians and Chinese, the Soviet government in the early days of its existence declared itself ready to remove the causes of distrust in relations between Russia and those weaker oriental countries. The list of basic acts and declarations of the Bolshevik regime to correct the policy of imperial Russia included (1) the Decree on Peace which repudiated secret agreements aiming at expanding Russian dominions at the expense of its weaker neighbors; (2) the Appeal of November 15, 1917, to the peoples of the warring countries; (3) a similar appeal to the Mohammedan Toilers of Russia and of the Orient of December 3, 1917; (4) the negotiations during the period of November 1917-March 1918 of the Soviet Peoples' Commissariat for Foreign Affairs with the Chinese envoy in Petrograd on Russia's withdrawal from the enslaving treaties with China.⁷³

During the following period the Bolshevik leaders proceeded to translate words into deeds. In his declaration to the Congress of the Soviet on July 4, 1919, Chicherin stated that the Soviet Union had withdrawn from all secret agreements directed against China, and had reestablished the rights of the Chinese people in Manchuria, in particular, recognizing the Chinese owner-

ship of the Chinese Eastern Railway. Furthermore, he declared that the Soviet government was ready to abandon the extraterritorial rights of Russian citizens, in China, Persia and Turkey.

On July 25, 1919, following Chicherin's declaration to the Congress, the Soviet government addressed itself to the Chinese nation and to the governments of Northern and Southern China, and stated that "the workers peasant government" declared all agreements made with Japan, China and former allied powers by means of which the tsarist regime, in cooperation with its allies, had enslaved the peoples of the East, in the first place the Chinese nation, as no longer valid. The Soviet government moreover renounced contributions from the Chinese government for the Boxer rebellion (1900) and all the special privileges and concessions that accrued to Russian merchants on Chinese territory.⁷⁴

These principles were later developed in the note of September 27, 1920, which proposed to the Chinese government that it conclude with the Soviet government a treaty in which the Soviet government would confirm that all agreements concluded by the former Russian regime with China were no longer in force, thus renouncing seizures of Chinese territory by giving up Russian concessions in China and returning to China, unconditionally, all that had been taken away from China by the tsarist government and Russian bourgeoisie. The Soviet government also proposed that Russian nationals in China should not enjoy privileges of extraterritoriality.⁷⁵

For quite some time, these various declarations remained essentially in the sphere of declarations. Neither was the Soviet government anxious to give up its rights in Northern Chinese provinces, nor was the Chinese government too anxious to enter into relations with the regime in Russia, unless its stability was assured. On May 31, 1924, the Soviet Union and China concluded a "Treaty on the General Principles for the Regulation of Problems in Relations Between the Soviet Union and the Chinese Republic." The treaty provided for the establishment of regular diplomatic relations between the two countries, and obligated the two countries to organize within one month a conference for the settlement, in detail, of Soviet-Chinese questions. This conference was to replace the tsarist treaties with a new set of agreements, on the basis of equality, mutual interest and justice. The Soviet government concretely repeated its declaration that earlier agreements with China or those with third states directed against the sovereignty and interests of either party were invalid. Thus, Mongolia was declared an integral part of China under Chinese sovereignty. As regards the Chinese Eastern Railway, it was declared to be a purely commercial venture, exercising no jurisdiction to the Chinese territory, and the Soviet Union granted China the right to purchase this railway. However, the treaty remained in force as regards the provisions of the 1896 contract regarding the construction and the management of the Chinese Eastern Railway.⁷⁶

However, no agreement was ever made regarding the rectification of Russian territorial acquisitions at the expense of China.

The same policy was followed with regard to Persia,⁷⁷ leading to the agreement of February 26, 1921, in which the Soviet government declared that all treaties concluded by the former tsarist regime with Persia were designed to restrict the rights of the Persian people and were, as a result, invalid. It further declared that the Soviet Union had renounced its participation in any measures which might weaken or violate Persian sovereignty, and, in addition, denounced all conventions or treaties with third powers which were to the detriment of Persia. The same criteria also applied to the financial policy of the tsarist government in relations to Persia, and particularly renounced all loans to Persia which had as their purpose, not the development of Persia, but the economic enslavement of that country. Thus the Soviet government declared that it would not demand the repayment of these loans. The same applied to various financial institutions, Russian government enterprises in Persian territory, the ownership of roads, telephone and railway lines, harbors and other means of transportation.⁷⁸ Among these treaties declared as invalid was the 1907 Treaty with Britain concluded by the tsarist regime against the interests of Persia.

Imperial Russia had treaties with France and Britain regarding territorial acquisitions in Turkey. Here the Soviet government adopted the same policy, particularly after the new regime under Kemal Pasha took control of the country. Not only did the Soviet government denounce treaties and agreements concluded with Turkey which were the consequence of the Russian policy of expansion towards the Turkish Straits, but it encouraged Turkey to follow the same policy with regard to other states.⁷⁹ In the Turkish-Soviet agreement of March 16, 1921, both parties obligated themselves not to recognize peace treaties or other international agreements which would be imposed by force on the other party. In addition, as none of the Russian-Turkish treaties concluded until then had corresponded to the true interests of both parties, all such treaties were declared invalid. The Soviet Union annulled all Turkish financial obligations, and annulled moreover the capitulatory regime.⁸⁰

In practice the Soviet Union did not always live up to the promises made in the first days of the Revolution. A typical example is the case of Mongolia, which, although a part of China was an area of economic and political penetration of tsarist Russia. Indeed, except for the short period following the downfall of the imperial regime Soviet government continued its policy of penetration. On November 5, 1921 RSFSR and People's Mongolia signed a treaty which recognized the Mongolian Government as the only legal authority in that country, and established diplomatic relations between the two countries.⁸¹

In obvious conflict with this treaty in May 31, 1924, The Treaty with the Republic of China, the Soviet government again recognized (Article V) that Outer Mongolia constituted an intrinsic part of the Chinese Republic.

The obvious purpose of the U.S.S.R. treaties with China, Persia and Turkey was not only anti-Western propaganda. The denunciation of tsarist

treaties with these countries gave the Soviet Union an opportunity to establish direct diplomatic relations with those countries at the time of isolation, and made safeguarding the influence of Western powers in these countries a more difficult problem. Certainly Soviet support for the Kemal regime reduced Western influence in Turkey.⁸²

Provisions of the 1924 treaty with China fell quite short of the initial promises of the Soviet declarations, and Soviet policy resumed its drive to strengthen the Soviet position in Mongolia, achieving its final separation from China. The Soviet Union has also not followed its promises in the 1924 treaty to revise the earlier tsarist treaties with China. In this connection the Chinese People's Republic in 1963 put forward a claim to some Chinese territories detached by the imperial Russian regime from old China, particularly in the frontier treaties of 1858, 1960 and 1881.⁸³

Unequal treaties also have a new application following the establishment of the Soviet sphere of influence in Eastern Europe. This obtains primarily in two areas, economic relations and collective security arrangements. The Soviet Bloc economic agreements, which have given control of important areas of industrial activity in Eastern European countries to the Soviet government, were unequal in terms of both economic sovereignty and economic exploitation.⁸⁴ The death of Stalin and the revolts of 1956 have reduced the extent of Soviet control of economic activities in Eastern Europe, with the exception of the continued monopoly for the extraction and processing of uranium ores. In 1957 the price of extracted ores was upgraded to correspond with the prices prevailing on world markets. However, the Soviet monopolistic position in this area of economic activity still continues.⁸⁵

The Warsaw Pact of 1955, which set up the Warsaw Treaty Organization, was also an unequal treaty. It authorized the Soviet Union to station troops in several European countries against the wishes of the countries involved. It also provided for the exercise of governmental power by the Soviet authorities in the territory of the socialist countries in Eastern Europe. Finally, the status of Mongolia became that of a dependent country, due to a series of international agreements which have given the Soviet Union important governmental powers in that country.

C. Treaties Imposed by Force

The catalogue of principles derived from the doctrine of peaceful coexistence, which is basic to international law, includes, according to the unanimous opinion of Soviet scholars the prohibition of the use of force or the threat of the use of force as a means of national policy. As Mr. Tunkin, the Soviet member of the International Law Commission, formulated this principle: "The old international law had recognized the right of States to use force in international relations and many treaties obtained by force had not been regarded as null. The new international law prohibited the use of force and

held States responsible for acts of aggression. The Special Rapporteur's new formula was at variance with the law as it now stood and did not correspond to its general line of development."⁸⁶ On another occasion he stated: "The use of force, or threat of force, constituted a very grave violation of Article 2, paragraph 4, of the United Nations Charter, and might even constitute a breach of the peace or a threat to the peace."⁸⁷

And yet, the Soviet practice insists that in certain situations the use of superior force in order to coerce a state to accept the terms of a treaty is legitimate.

The use of force is legitimate in all cases of victory in a war, in relation to defeated nations. As countries resisting the Soviet Union were aggressors, the use of force in order to impose a peace treaty was justified by the fact that aggressor states by acts of war have forsaken the benefits of international law and order. States which had taken part in resisting aggression were entitled to dictate and impose terms on the aggressor.

This reasoning justified the terms of peace settlements with countries defeated in World War II: Finland, Hungary, Romania, Bulgaria and Italy. The status of a defeated country justified the imposition of the occupation regime on Germany, and moreover, the right to dictate the terms of its political future.

On occasion the terms of an international agreement were imposed upon another state on the theory that the question had been settled by the leading powers of the world. Thus, the Soviet-Polish delimitation agreement of August 16, 1945, invoked the decisions of the Crimean Conference in which Poland was not represented.

Agreements were also imposed by force upon the three Baltic republics following the partition of Poland in September 1939. The first step leading to final incorporation of the three Baltic republics were the treaties of Mutual Assistance concluded with Estonia (September 28, 1939), Latvia (October 5, 1939) and Lithuania (October 10, 1939). On June 14, 1940, the Soviet government addressed a note to Lithuania, and on June 16, 1940, to Latvia and Estonia alleging a violation of these treaties and demanding reconstruction of their governments so as to include persons friendly to the Soviet Union, and moreover demanding the stationing of Soviet troops in Lithuanian, Estonian, and Latvian cities. Communist dominated governments of the three republics, with Soviet troops in control of their countries, then proceeded to request their incorporation into the Soviet Union.

The making of the Peace Treaties of 1947 was marked by a Soviet insistence upon restricting the debates on the terms of the Peace Treaties exclusively to consultations between the big powers. Indeed, in the final analysis, smaller states both defeated and allied had little to contribute to the political settlement which ended World War II. The Peace Treaties issued a new era, demonstrating that, in Eastern Europe, the Soviet Union would be for all intent and purpose the leading power.

The regime established in the following years in Eastern Europe, leading

finally to the conversion of the Eastern European countries to the Soviet form of government and the creation of the ideological, military and economic Bloc (the Socialist Commonwealth), was based upon a series of treaties imposed upon these countries by the Soviet Union. The Soviet reliance on force and intimidation was the foundation of the political order in Eastern Europe until the death of Stalin, and following his death was slowly replaced by more sophisticated techniques of cooperation, leading eventually to the emergence of the treaty system, more or less, freely agreed to by the Soviet Union and the smaller socialist countries. While the second generation of socialist treaties seemed to have been the result of a genuine agreement, at the same time basic treaties were imposed by force during Stalin's regime. In spite of the official repudiation of Stalin's methods in Soviet relations with the other socialist countries the Eastern European security system is still upheld by force. Hungarian revolt against Soviet dominance in 1956 was crushed by force, and in 1968 Czechoslovak efforts to achieve some independence of the Soviet control of its internal and foreign policy, were quashed by the invasion of Czechoslovakia by the Warsaw Pact forces. Czechoslovakia was one of the Socialist countries free of Soviet garrisons. Occupied by the Warsaw Pact forces Czechoslovakia was forced to accept a treaty legalizing permanent stationing of the Soviet troops in that country, in exchange for the withdrawal of the occupying armies.⁸⁸

NOTES

¹ Triska, Slusser, *The Theory, Law and Policy of Soviet Treaties* (1962) 38 ff; Schweisfurth, *Der internationale Vertrag in der modernen sowjetischen Völkerrechtstheorie* (1968) 29-31.

² Cf. Chapter II.

³ ILC (1966) 177 Cf. also O'Connell, *International Law* (1965) I, 24 ff.

⁴ ILC (1964) 120.

⁵ Cf. ILC (1963) 112, 122, *Ibid.* (1966) 63.

⁶ *Ibid.* (1963) 128.

⁷ *Ibid.* (1961) 170.

⁸ *Ibid.* (1957) 153 (Tunkin).

⁹ Lukashuk, "Mezhdunarodnaia organizatsia kak storona v mezhdunarodnikh otnosheniakh," *SEMP* (1960) 144-145, 148; Shurshalov, *Osnovnye voprosy mezhdunarodnogo dogovora* (1959) 37. Cf. Lisovskii, *Mezhdunarodnoe pravo* (1955) 65. Tunkin, *Osnovy sovremennogo mezhdunarodnogo prava* (1956) 11; see Schweisfurth, note 1, 80.

¹⁰ *SDD*, XXII, 217.

¹¹ *Sluzbeni List*, (1965) 13, no. 6. Cf. Uschakov, *Der Rat für gegenseitige Wirtschaftshilfe, in Integration Osteuropas 1961-65* (1966) 238.

¹² Grzybowski, *Soviet Private International Law* (1965) 47 ff.

¹³ ILC (1963) 15.

¹⁴ *Ibid.* (1959) 65.

¹⁵ *Ibid.* (1965) 73.

¹⁶ *SU RSFSR*, 1923, II. no. 107.

¹⁷ Triska, Slusser, "Ratification of Treaties in Soviet Theory, Practice and Policy," *BYBIL* 34 (1958) 314-15.

- ¹⁸ *Ibid.* 315-21.
 - ¹⁹ *SZ* (1925) I, no. 68.
 - ²⁰ *Ved.* (1938) no. 11.
 - ²¹ *Ibid.* (1950) no. 14.
 - ²² Korolenko, *Torgovye dogovory i soglasenia SSSR s inostrannymi gosudarstvami* (1953) 11-13.
 - ²³ *Dok.*, 4, 442.
 - ²⁴ *Ibid.* 2, 528.
 - ²⁵ *SZ* (1925) no. 35.
 - ²⁶ Triska, Slusser, note 1, 53-54.
 - ²⁷ Cf. *PCIJ A* 23, 30.
 - ²⁸ E.g., Decree of May 23, 1966, on the ratification of the Protocol regarding the extension of the Soviet-Finnish Fisheries Agreement of February 21, 1959, *Ved.* (1966) no. 22.
 - ²⁹ E.g., *Ved.* (1966) no. 7.
 - ³⁰ E.g., Soviet Finnish Consular Convention of 1966, *Ved.* (1966) no. 35.
 - ³¹ E.g., ratification of the Cultural and Scientific Cooperation Agreement with Pakistan of 1966, *Ved.* (1966) no. 7. Cf. Triska, Slusser, note 1, 68 ff. Taracouzio, *The Soviet Union and International Law* (1935) 245.
 - ³² *ILC* (1959) 72.
 - ³³ *Ibid.* (1965) 73.
 - ³⁴ *Ibid.* (1965) 61.
 - ³⁵ *ILC* (1965) 85.
 - ³⁶ *SZ* (1924) I, 99.
 - ³⁷ *Ibid.* (1926) no. 61.
 - ³⁸ *Izvestia*, July 1, 1958.
 - ³⁹ Triska, Slusser, note 1, 88-89.
 - ⁴⁰ *Juridicheskii slovar*, 1956, vol. 2, 33.
 - ⁴¹ *ILC* 1962, 161-62; cf. *Ibid.* (1965) 160.
 - ⁴² *Ibid.* (1962) 230; cf. *ibid.* (1962) 163-64; 140, 157; cf. also *Ibid.* (1965) 176.
 - ⁴³ *SDD* 5, 3-5. *LNTS* 94, 65-74.
 - ⁴⁴ *SDD* 7, 40-53.
- In its December 2, 1927, Declaration on Accession to the Protocol on the Prohibition of the Use of Suffocating, Poisonous and other Similar Gase and Bacteriological Means of Warfare on June 17, 1925, the Soviet Union made the following reservations:
- "(1) That the Protocol obligates the Soviet government only with respect to states that signed and ratified it or that have finally adhered to it; and (2) that the Protocol would cease to be binding upon the government of the USSR with respect to any hostile state, the armed forces of which as well as the formal or factual allies would ignore the prohibition that constituted the subject of the Protocol."
- ⁴⁵ *UNTS* 1, 13-33, *SDD* 15, 32-40.
 - ⁴⁶ *Ved.* (1954) no. 12 *SDD*, 16, 66-71.
 - ⁴⁷ *UNTS* 75, 31-38, *SDD* 16, 71-100.
 - ⁴⁸ *Ved.* (1954) no. 12, *SDD* 16, 290-294. China, Denmark, Israel, the Dominican Republic and Sweden declared that they do not consider themselves bound by the provisions of the Convention with regards of the Soviet Union in view of Soviet reservations.
 - ⁴⁹ Cf. Geneva Protocol of June 17, 1925, *supra*. See also Gubin, "Sovetskii Soiuz i ogovorki k mnogostoronnyim dogovoram," *SEMP* (1959) 126-149; *id.* "Voznikovenie i razvitie instituta dogovorok k mnogostoronnyim dogovoram," *Ibid.* (1960) 232-243.
 - ⁵⁰ *Yearbook of the United Nations*, 1950, 873-880 and 1951, 820-28.
 - ⁵¹ May 28, 1951, Reservation to the Convention on the Prevention and Punishment of the Crime of Genocide, *ICJ Reports* (1951) 10.
 - ⁵² *Ibid.*
 - ⁵³ *UNTS* 217, 223-379.

- ⁵⁴ Degras, *Soviet Documents on International Relations* III, 312.
- ⁵⁵ *VPSS*, IV, 446-47.
- ⁵⁶ Triska, Slusser, note 1, 168-72.
- ⁵⁷ *Dok. I*, 565-67.
- ⁵⁸ *Pravda*, September 18, 1939.
- ⁵⁹ *Izvestia*, Nov. 29, 1939.
- ⁶⁰ Secret Protocol to the Non-aggression Treaty of August 23, 1939, *Nazi-Soviet Relations* (1948) 78.
- ⁶¹ *Izvestia*, April 6, 1949.
- ⁶² *Dok. I*, 490-92.
- ⁶³ *Izvestia*, April 6, 1945.
- ⁶⁴ Decree of the Presidium of the Supreme Soviet, May 7, 1955, *Ved.* 1955, 169, 170.
- ⁶⁵ *Dep't of State Bulletin*, Jan. 19, 1958.
- ⁶⁶ *Izvestia*, Sept. 30, 1949.
- ^{66a} Grzybowski, *Soviet Private International Law* (1965) 61 ff.
- ⁶⁷ *Cal.* 10.
- ⁶⁸ *Cal.* 409 ff. Cf. Triska, Slusser, note 1, 372-76, 142-143, 411-412.
- ⁶⁹ *Dep't of State, Nazi-Soviet Relations* (1948) 105-107; cf. also *Cal.* 127.
- ⁷⁰ *Cal.* 128.
- ⁷¹ *VPSS* 1946, 90-91.
- ⁷² E.g., the Soviet-East German Treaty of Sept. 20, 1955, reduced German financial contributions to the maintenance of Soviet troops in Germany from 1600 million marks to 800 million, thus disclosing the existence of an earlier agreement in this matter. *Cal.* 337.
- ⁷³ Frenzke, "Der Begriff des ungleichen Vertrages im Sowjetisch-Chinesischen Grenzkonflikt," *Osteuropa Recht*, (1965) 97.
- ⁷⁴ *Dok.*, 2, 221-22.
- ⁷⁵ *Sovetsko-kitajskie otnoshenia 1917-1957*, 1959, 51-53.
- ⁷⁶ *Dok.*, 7, 331-35.
- ⁷⁷ Soviet government note of Jan. 14, 1918, *Dok. I*, 91.
- ⁷⁸ *SU RSFSR* (1921) no. 73.
- ⁷⁹ Note of the Foreign Commissar to Kemal Pasha of June 3, 1920, *Dok. 2*, 554-555.
- ⁸⁰ *SU RSFSR* (1921) no. 72.
- ⁸¹ *Dok. 4*, 476.
- ⁸² Zakharova, "Otkaz sovetskogo gosudarstva ot dogovorov tsarskoi Rossii narušavshykh prava narodov vostochnykh stran," *SEMP* (1962) 126-36.
- ⁸³ Frenzke, note 73, 69 ff.
- ⁸⁴ Grzybowski, "Foreign Investment and Political Control in Eastern Europe," 13 *Journal of Central European Affairs* (1953) 13-27.
- ⁸⁵ Grzybowski, *The Socialist Commonwealth of Nations* (1964)
- ⁸⁶ *ILC* (1966) 23.
- ⁸⁷ *Ibid.* (1963) 48.
- ⁸⁸ *Pravda*, Oct. 19, 1968.

Chapter VIII

DISPUTES

I. GENERAL PRINCIPLES

A. *The Duty to Settle Disputes Peacefully*

In the "code" of peaceful coexistence, the principle of peaceful settlement of international disputes has a prominent place. It is a corollary to the prohibition of use of force, or threat of the use of force in order to achieve desired solutions in international controversies. This principle was moreover included in the 1961 program of the Communist Party of the Soviet Union.

Mr. Tunkin of the International Law Commission was positive that the prohibition of the use of force in international relations was essentially a Soviet contribution to contemporary international law.

"That principle had been enunciated for the first time by the Soviet State in its very first constitutional act, in the form of the prohibition of aggressive war. The Soviet Decree of 8 November 1917 had proclaimed that aggressive war was the gravest crime against humanity. That principle had been incorporated in the Pact of Paris of 1928, which outlawed aggressive war in international relations. The United Nations Charter had developed the principle and in Article 2, paragraph 4, had prohibited the threat and the use of force. The terms of that paragraph were such as no longer to leave any loophole for justifying the illegal use of force.

"It had been pointed out by the late Sir Hersch Lauterpacht and many others, including himself, that those provisions of the Charter had marked a great advance in international law; it was no longer possible to represent the use of force, unfortunately resorted to occasionally by some States, as falling outside the prohibition of aggressive war. The Principles of the Charter were principles of general international law and as such were binding upon all States. The prohibition of the use of force, as embodied in the Charter, had replaced the old rule of international law which used to acknowledge the right of a sovereign State to wage war—the *jus ad bellum*."¹

A specific application of the prohibition of the use of force in settlement of international disputes was due to Khrushchev's initiative of December 31, 1963.

In a message to the governments of the world Khrushchev appealed for the conclusion of an agreement renouncing the use of force in frontier disputes.

He moreover urged the government to declare that national territories of states should not, even temporarily, be subject to aggression, invasion, military occupation or other measures involving use of force. He also urged that the declaration should prohibit the use of force in order to impose a governmental or social system, or the use of other means of pressure such as refusal to recognize the state, or to maintain with it diplomatic relations, or to use any other reasons as an excuse for the violation of the territorial integrity of any state. He added that members of the international community have an obligation to resolve territorial disputes by peaceful means only, including direct negotiations, mediation, conciliation, or any other peaceful means chosen by the countries in accordance with the Charter of the United Nations.²

The issue of territorial disputes was raised again by the Soviet government in the context of territorial claims of various ex-colonial nations, and Khrushchev repeated again the offer to conclude a treaty for the renunciation of the use of force in the settling of territorial disputes, and asked the Secretary-General to put the question of such an agreement on the agenda of the 19th session of the General Assembly.³

B. *The Duty to Negotiate*

While pacific settlement of international disputes, including territorial claims, is a *jus cogens* principle of international law, this duty is limited to only one form of dispute settling action, i.e. negotiation. The Program of the Communist Party adopted in 1961 stated that "Peaceful coexistence implies renunciation of war as a means of settling international disputes, and their solution by negotiation." It follows moreover, that Khrushchev's proposal for the renunciation of force in settling territorial disputes suggests as means by which parties can resolve their differences, an agreement reached either in direct negotiations, by conciliation, or mediation. Other means of dispute settling involving the decision of a third party, arbitration, or judicial process are to be left as an option should the parties agree to their use.

An example of a distinct reluctance on the part of the Soviet Union to commit itself beforehand to dispute resolution by arbitration or judicial decision is also illustrated by the provisions of the Final Act of the Washington Conference on Antarctica (December 1, 1959), to which the Soviet Union was a party. Article XII of this treaty stated:

1. If any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of the present treaty, those Contracting Parties shall consult among themselves with a view to having the disputes resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

2. Any dispute of this character not so resolved shall, with the consent in each case of all parties to the dispute, be referred to the International Court

of Justice for settlement; but failure to reach agreement on reference to the International Court shall not absolve parties to the disputes from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 of this article.⁴

Article XI of the Antarctica Treaty represents little more than a restatement of the formula found in article 33 of the United Nations Charter which provided in Paragraph 1 that:

"The parties to any dispute, . . . shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."

In other words, the obligation existing under the terms of the treaty consists in the duty of the parties in dispute "to consult among themselves with a view of having the dispute resolved" by any of the peaceful procedures "of their own choice." Disputes not settled by these means are to be transferred to the International Court of Justice, with the agreement of the parties concerned. A dispute cannot be taken to the Court without "the consent, in each case, of all parties to the dispute."

The terms used in article XI of the Antarctica Treaty was not exclusively due to the attitude of the Soviet Union. It also reflected the position of the Latin American states as regards their opposition to accepting compulsory jurisdiction of international judicial bodies. Nevertheless this position does fully reflect the Soviet attitude to the pacific settlement of international disputes dictated by a combination of principles rooted in the Soviet concept of the present community of nations.

C. Soviet Attitudes to Dispute Settling

Following the reestablishment of diplomatic relations with the capitalist Europe the Soviet Union took the attitude of an outsider in the diplomatic intercourse which had centered on the League of Nations, and institutions connected with it. Soviet leadership was convinced that contradictions between the socialist and capitalist systems of property relations restricted the area of a fruitful cooperation between the Soviet Union and capitalist states.

Chicherin speaking to the first plenary session of the Conference of Genoa (April 10, 1922) declared:

"The Russian delegation while still maintaining the position of communist principles, recognizes that in the present historical epoch which permits the parallel existence of the new social order with the old, the economic cooperation of states representing two systems of property relations is most indispensable for the general economic recovery. The Russian government acknowledges, therefore, the great importance of the first point of the resolution of Cannes as regards the mutual recognition of the different

systems of property relations and of the political and economic forms existing in various countries. The Russian delegation has come here not to propagandize its personal theoretical views, but in order to establish business relations with the governments and commercial and industrial interests of all countries, on the basis of reciprocity, legal equality and of unconditional recognition."⁵

Thus the meeting ground between the Soviet Union and the rest of the contemporary world was at that time limited exclusively to economic relations, for it was felt that only upon this basis could the world community coexist.

This attitude was further exacerbated by a pessimistic view of the chances of the preservation of peace. Maxim Litvinov representing the Soviet Union at the meetings of the Preparatory Commission for the Disarmament Conference (November 30, 1927), declared that "The Government of the Union of Socialist Soviet Republics adheres to the opinion it has always held that under the capitalist system no ground existed for counting upon the removal of the causes that gave rise to armed conflicts. Militarism and navalism were essentially natural consequences of the capitalist system. By the very fact of their existence, they intensified existing differences, giving a vast impetus to all potential quarrels and inevitable converting these into armed conflicts."⁶

This situation changed after World War II, when the Soviet Union became one of the founding members of the United Nations of which the International Court of Justice, in contrast with the pre-war situation had become a part. Thus the Soviet Union became also a party to the Statute of the International Court of Justice. Furthermore, in response to the note of the Dutch government regarding the binding force of the Hague Conventions of 1899 and 1907 upon the Soviet government the Soviet Union confirmed that it considered itself bound by their provisions. The Soviet note of March 7, 1955 stated that the government of the USSR recognized the ratification by Russia of the Hague Conventions and declarations of 1899 and 1907 inasmuch as these conventions and the declaration did not contradict the Charter of the United Nations, or were not subsequently replaced by international agreements to which the Soviet Union was a party, such as the Geneva Protocol of 1925 concerning chemical and bacteriological warfare, or the Geneva Conventions of 1949 concerning protection of the victims of war.⁷

The change in attitude did not come about unexpectedly. While Stalin held power, the Soviet Union was a reluctant member of the new institutions created by the Charter of the United Nations. It refrained from joining the organizations designed to strengthen the economic unity of the world. It withdrew from some of the institutions aiming at forging closer cultural ties between the nations of the world and the promotion of welfare plans to assist the poorer countries. This policy changed after the death of Stalin. Khrushchev's coming to power caused increasingly greater involvement of the Soviet Union in the life of the World Community and in the pacific

settlement of disputes, especially in view of the nuclear stalemate that made war an impractical instrument of foreign policy.

D. Dispute Settling and the Modern Community

Following World War I, efforts at securing peace went in two directions. In the first place, leaders of the great nations were concerned with disarmament and security. In the second place, the peaceful settlement of international disputes, particularly through the international judicial process, received great attention. It seemed that the two methods could legally assure security of nations great and small and change the habit of nations to resort to force in pursuance of their national policies. The core of the pacific system of dispute settling was the compulsory jurisdiction of the Permanent Court of International Justice.

While in the first period of Soviet relations with the capitalist world the idea of limited cooperation ruled out systematic Soviet participation in the contemporary techniques of dispute settling, and in particular the settlement of international disputes by the judicial process, the present doctrine in this respect is that changes in the structure of the international community (emergence of the socialist system and the emancipation of colonial nations) have put the entire question of the dispute settling into a new perspective. The confrontation between the traditionalist and Soviet approaches to the problems of the international community took place in the International Law Commission which in its work on various codification projects, sought a consensus between the socialist and free worlds.

Soviet members of the International Law Commission, while emphasizing the prohibition of the use of force in international relations thought that compulsory jurisdiction was a relic which had no place in the modern international community, a community of free and sovereign states. Sovereignty and independence were a necessity resulting from the destruction of the capitalist empires, and compulsory jurisdiction would in effect continue imperialistic domination of great powers during the current period. Mr. Kozhevnikov was convinced that compulsory jurisdiction "... presupposed the existence of a supranational authority. The very foundations of existing international law, as an expression of the will of sovereign States, would thus be called into question. Though States might voluntarily abandon some particle of their sovereignty, the whole theory and practice of arbitration were based upon the agreement of the parties. At present there was no problem in dispute which could not be settled by peaceful means through the mutual agreement of the countries concerned. To his mind, it would be totally contrary to the principles of arbitration to oblige the parties to act against their will."⁸

Ten years later, Mr. Tunkin endorsed Mr. Kozhevnikov's position.

"With the approach he had, it might be claimed that the whole of inter-

national law was meaningless in the absence of compulsory jurisdiction. The whole matter was a very general one and of the greatest importance. Most internationalists felt that, despite its weaknesses, international law played a vital role in the maintenance of peace and in the development of friendly relations between States.

"He personally believed very strongly that the contention that there could be no international law without compulsory jurisdiction would, at that stage, do nothing but harm to the development of international law."⁹

Soviet members of the Commission opposed compulsory jurisdiction even in cases of such gravity as the freedom of parties to denounce and terminate unilaterally treaties. Mr. Tunkin explaining his point of view stated that:

"Among the many treaties in existence, there were a number which were a heritage of the colonial system or had recently been imposed by the colonial Powers on new States. As the new States matured and as formal independence was transformed into real independence, the social forces working for peace were bound to rebel against certain treaties concluded earlier. Where subservient governments had given way to strong ones, the effect of article 25 [draft Convention on arbitration] would be to place obstacles in the path of States when they sought to free themselves from onerous and unjust treaties by invoking the rights laid down in some of the articles already discussed. It was hardly likely that the States responsible for having imposed such treaties would be willing to dissolve them. If the claimant State's suggestion of arbitration were rejected, its only recourse would be to bring the matter before the International Court of Justice.

"His comments should not be taken to mean that he minimized the importance of arbitral procedure or of the International Court; what was objectionable in the article was that it obliged the parties to accept a compulsory jurisdiction in every instance. There was no escaping the fact that barely forty out of 111 States Members of the United Nations had accepted the Court's jurisdiction and many had done so with important reservations."¹⁰

Thus, in general, arbitration, and especially compulsory arbitration was to play a lesser role in the modern community of nations. Hence Mr. Krylov explained:

"Arbitration had played a great and honorable role in the history of international relations, but compulsory arbitration was fast disappearing and was now to all intents and purposes accepted only by small number of States. Members should be mindful of the reception given to the draft on arbitral procedure by the General Assembly and of the fact that the draft had so far led to no practical results, the reason being that both the eminent special rapporteur on the subject and the Commission itself had been too ambitious."¹¹

The same convictions were also expressed on a number of occasions in the dissenting opinions of Soviet and socialist judges of the International Court of Justice.

E. *Sovereignty and International Functions*
(*Views of the Socialist Members of the International Court of Justice*)

One basic principle upon which the socialist judges continually insisted was that national sovereignty, as a legal and a political principle, continued to be the keystone of relationships between independent states within the international community. Accordingly therefore the creation of the United Nations had produced essentially no basic changes in the legal position of member states. As Judge Zoricic, of Yugoslavia, stated in his dissenting opinion in the *Admission of a State Case*:

"The permanent member [of the Security Council] in question, rightly or wrongly, maintained its interpretation of the Declaration of Potsdam and of the peace treaties. For that member, these instruments involved an obligation on signatory States to support applications for admission . . . It goes without saying that the co-signatories of these instruments were free to accept this interpretation or not. What is decisive, for the question before the Court, is not the correctness of the interpretation made by that State, but the right of that State to rely on it . . . This right is guaranteed by the principle of the sovereign equality of States which underlies the organization of the United Nations . . . It follows that the member in question was juridically entitled to maintain its interpretation and therefore to call for the simultaneous admission of the ex-enemy States."¹²

The significance of this statement lies in Judge Zoricic's assertion that the Court lacks power to correct an error in the interpretation of an international obligation by a sovereign state, even though that state is a member of an international organization, in this case the United Nations Security Council, and moreover participates in the decisions of its organs. This view was developed to its logical conclusion by Judge Krylov of the Soviet Union, who insisted that the Court had no right to give an opinion on the question of whether a state's understanding of a treaty provision was right or wrong, because it would amount to a censure of the reasons given by the state for its position in the deliberations of the Security Council. However, the Court's interpretation of the treaty provisions would have no bearing on the state's duty to conform to the Court's legal opinion.¹³

The proposition that membership in the United Nations organization had not vitally affected the sovereign rights of member nations, even within the context of the organization, was reiterated by Judge Winiarski of Poland, in the *Expenses Cases*.¹⁴ The Judge distinguished between formal and substantive validity of the decisions of the General Assembly: "[T]he Assembly . . . interprets the Charter by applying it and its interpretation as final. This is true to a certain extent and particularly where its interpretation has been generally accepted by Member States."¹⁵ Judge Winiarski indicated, furthermore, that the collective aspect of the participation of individual nations in the United Nations is resolved into a number of separate relationships which depend upon each member's acceptance of the collective decision

of United Nations' bodies. Membership in the United Nations, therefore, does not involve a duty to support its policy. To gain this support, the United Nations policy must become the national policy. Sometimes it may become necessary to make a choice between upholding the aims of the United Nations and the principle of national sovereignty of member states. It seems to be Judge Winiarski's view that, in both legal and political terms, in the case of such a conflict, national sovereignty is a more important feature of the present international system than the aims of the United Nations. He argued that each member state has a right to reject the decision of the organs of the United Nations, even when that decision was adopted by a proper majority and was authorized by the Charter:

"It is sometimes difficult to attribute any precise legal significance to the conduct of the contracting parties, because it is not always possible to know with certainty whether they have acted in a certain manner because they consider that the law so requires or allows, or for reasons of expediency. However, in the case referred to the Court, it is established that some at least of the Member States refuse to comply with the decisions of the General Assembly because they dispute the conformity of those decisions with the Charter. Apparently they are of the opinion that the resolutions cannot be relied upon as against them although they may be valid and binding in respect of other States. What is, therefore, involved is the validity of the Assembly's resolutions in respect of those States, or the right to rely upon them as against those States.

"It has been said that the nullity of a legal instrument can be relied upon only when there has been a finding of nullity by a competent tribunal . . . In the international legal system, however, there is, in the absence of agreement to the contrary, no tribunal competent to make a finding of nullity. It is the State which regards itself as the injured party which itself rejects a legal instrument vitiated, in its opinion, by such defects as to render it a nullity. Such a decision is obviously a grave one and one to which resort can be had only in exceptional cases, but one which is nevertheless sometimes inevitable and which is recognized as such by general international law.¹⁶

This right to reject a United Nations decision extends also to the right of each nation, at its discretion, to recognize or reject an arbitral award or a judicial decision. The adjudication may be rejected if the member state deems it to be contrary to the rules of international law, as Judge Winiarski stated in his dissent to the advisory opinion in the *Effect of Awards Case*:¹⁷

"An arbitral award, which is always final and without appeal, may be vitiated by defects which make it void; in this event, a party to the arbitration will be justified in refusing to give effect to it. This is not by virtue of any rule peculiar to ordinary arbitration between States; it is a natural and inevitable application of a general principle existing in all law: not only a judgment, but any act is incapable of producing legal effects if it is legally null and void."¹⁸

In effect, the principles which bind members of the United Nations are

identical with those which bind members of the international community at large. The object of these principles of international law, and of the United Nations Charter, is to protect the independent and sovereign status of each state. The continued existence of international organizations depends, therefore, upon the support of each member, and though the rule of unanimity may be abrogated and replaced by a simple majority vote, still the unanimity rule is supported by the doctrine of formal and substantive validity. Consequently, it is not surprising that socialist judges favor treaties or international conventions as instruments creating mutual rights and obligations between members of the international community and as sources of legal rules.¹⁹ And for similar reasons Judge Krylov refused to use analogy so as to apply a general principle of international law to a new but similar fact situation.²⁰

Since the socialist system, in its legal arrangements and institutions, favors the sovereign nation over the decisions of collective bodies, it seems natural that it would restrict the use of arbitration or judicial process strictly to situations where the adjudicative power is exercised with the full consent of the parties. International order and peace cannot be achieved through law enforcement. The proper means for resolving conflicting interests is through negotiation, bargaining, and mutual accommodation. Thus where doubt arises as to whether a state has consented to a judicial settlement of its rights, the doubt should be resolved by presuming that the state has not accepted the principle of judicial accountability.²¹

The ultimate in the state-centered approach to the role of international bodies was reached in Judge Winiarski's separate opinion in the *Interpretation of Peace Treaties Case*.²² Bulgaria, Hungary and Romania refused to cooperate with the other two signatories to the Peace Treaties, the United Kingdom and the United States, in establishing an arbitral commission to resolve disputes concerning the interpretation of those instruments. The question was submitted to the United Nations General Assembly, which requested the International Court of Justice to give an advisory opinion in order to clarify a certain legal point before the Assembly made its recommendations. Bulgaria, Hungary and Romania again refused to cooperate, this time failing to participate in the proceedings before the Court. Judge Winiarski stated in his separate opinion that the Court would violate basic rules of international law if it complied with the General Assembly's request, since an advisory opinion in this case would be "a judgment delivered without the consent of the interested parties" and, furthermore:

"[T]he Court is pronouncing on the interpretation and application of the jurisdictional clauses of the Peace Treaties, and this in the first place is the prerogative of the high contracting parties themselves; the Court could not do so without their consent or, at least as a general rule, without their participation. The Court heard the interpretation and the conclusions of the United States and the United Kingdom; it did not hear statements by the three States."²³

In the same vein, Judge Winiarski continued by suggesting that protection of the sovereign rights of independent states constitutes the supreme value of the law of nations.²⁴

The dominant role of national sovereignty in international relations, of course, limits the interference of international organizations in the internal affairs of the socialist world. The socialist view also extends domestic concepts of jurisdiction and of national sovereignty to include even the situations covered by international agreements, and decisions of judicial bodies or arbitral tribunals. In the final analysis it is the state's specific acceptance which gives validity to the decisions of international bodies, whether political or judicial.

Judge Winiarski said:

"It sometimes happens in domestic law that the most certain and indisputable subjective right cannot obtain judicial protection because a rule of procedure is opposed to it . . . This is inevitable, for behind the rules of procedure is a general interest of such importance that it overrides what may be very legitimate and very important particular interests."²⁵

Judge Krylov stated his viewpoint with much greater clarity. According to him the opinion issued by the Court in the Peace Treaty case was an abuse of power. The interested states had refused to participate in the discussions of the General Assembly. They also had refused to participate in the proceedings before the Court and had never agreed to the jurisdiction of the Court to hear and decide the case. As a result, there was no basis for judicial action. In addition only the particular signatory powers had the right to interpret the provisions of a Treaty, and in this case they had not surrendered that right to the Court.

Judge Krylov furthermore pointed out that the new international law differed from the old rules. It had been said in the past, he continued, that if a certain matter was a subject of an international agreement it would no longer be within the exclusive domestic jurisdiction of the states concerned. This is no longer so. The new order established by the Charter of the United Nations rested on the much broader concept of domestic jurisdiction than in the past. It had been expressly agreed in San Francisco where:

"The stress was laid, in particular, on the fact that a broader concept of the domestic jurisdiction of the State was necessary primarily for the protection of smaller and medium nations. One also had the impression that it was necessary to broaden the domestic jurisdiction of the State to set aside the difficulties which might arise from the competence of the Economic and Social Council. One had principally in mind the clause of Article 55 of the Charter on Human Rights and Fundamental Freedoms. The drafting of this article, aiming at promoting respect for these rights and liberties, was intended to avoid the possibility of interference by the Organization in the national domain of the State."²⁶

One of the important questions that preoccupied socialist judges was the question of conditions which restrict the right of the organs of the United

Nations to address requests for advisory opinions from the International Court of Justice. In his dissenting opinion in the *Interpretation of Peace Treaties Case*,²⁷ Judge Winiarski insisted that the International Court was bound by the basic rules which governed the advisory procedure under the Permanent Court, viz., that "in regard to advisory opinions, the Court should proceed in all respects in the same way as in contentious cases."²⁸ Also, Judge Winiarski stated, "above all, the principles of judicial procedure, is the principle of international law according to which 'no State can, without its consent, be compelled to submit its disputes with other States either to mediation or arbitration.'"²⁹ The danger of an advisory opinion was that it could be used to assist in the settlement of a dispute between States, a purpose for which it was not designed:

"[A]n advisory opinion which is concerned with a dispute between States from a legal point of view amounts to a definitive decision upon the existence or non-existence of the legal relations, which is the subject of the dispute. It follows that the opinion cannot fail to exercise very great influence on the respective legal positions of the States, all the more so because the opinion may be used as a means of psychological pressure upon the governments of the States concerned."³⁰

The socialist judges also differed with their colleagues as to what legal questions were suitable for advisory opinions. The majority asserted the Court's right and duty to render an advisory opinion without specific reference to the conditions under which a dispute between states could be entertained. Thus, in acceding to the General Assembly's request to clarify a legal point in the *Interpretation of Peace Treaties Case*, the Court rejected the argument that its advisory opinion would interfere with a sovereign state's domestic affairs in contravention of article 2(7) of the United Nations Charter, since the matter concerned a question of international law.³¹ Judge Koretsky, in his dissent in the *Expenses Case*, enjoined the majority from adopting such an approach:

"The Court must not shut its eyes to reality. The image of Themis with her eyes blindfolded is only an image from a fairy-tale and from mythology. The Court, taking it into consideration, should at the same time have in mind the strict observation of the Charter."³² Judge Zoricic made a similar appeal in the *Conditions of Admission Case*, expressing the wish that his colleagues be mindful of the political implications of an advisory opinion.³³ Judge Krylov, in his dissenting opinion in the same case, also emphasized that political questions, even if couched in legal terms, were outside the competence of the Court. He cited the Permanent Court's practice of considering only concrete disputes and the fact that "during the eighteen years of its activity . . . [the Permanent Court] was never asked to give an advisory opinion regarding any article of the Covenant of the League of Nations *in abstracto*," the reasons for which, Judge Krylov concluded, were that "it was not desired to involve the Permanent Court in political disputes."³⁴ He moreover raised the objection that an opinion rendered in reply to a political

question expressed in abstract form, will have a "quasi-legislative effect, and this . . . is in no way desirable."³⁵

In final analysis the viewpoint of socialist judges is that the modern community of nations is state oriented.³⁶

F. The Competence to Interpret Treaties

An important place in the set of Soviet doctrines defining the scope and methods of dispute settling in the modern community belongs to the doctrine on competence to interpret international treaties. As socialist judges have explained the right to interpret treaties is the exclusive prerogative of the parties, and no substitute for the exercise of this right must be permitted except by an agreement expressed by the parties in each case. This position takes no account of disputes traditionally within the ambit of judicial function, including the interpretation of treaties, excluding those which are of non-legal nature.³⁷

Soviet diplomatic practice tends toward the view that the right to interpret treaties is, in the first place, vested in the states which are parties to the treaties. Pronouncements by the socialist judges seem to indicate that states have the right to rely upon their own understanding of the meaning of treaties even when their views are not shared by the other parties to the treaty. Certainly, an advisory opinion by an international court, obtained without the consent of a state concerned, may not interfere with this right of interpretation. Hence during the discussion of the draft of the Australian resolution providing for the compulsory jurisdiction of the International Court of Justice in all matters concerning interpretation of the Charter, the Soviet delegation asserted that this right could be exclusively exercised by the organs of the United Nations, which had an obligation to enforce the provisions of the Charter and, therefore, had the exclusive right to its authentic interpretation. Soviet scholars maintain that interpretations of the Charter by the International Court are not authentic, as they are not compulsory.³⁸

While Soviet legal scholars admit the possibility of a legal question including the interpretation of the UN Charter being submitted to the Court, they are of the opinion that the International Court of Justice should not interpret the Charter without such a request. Shurshalov has stated that "it is impermissible that the International Court should interpret the Charter without the request of the competent organs of the UNO or against their will. In such a case it would be put above the General Assembly or the Security Council, which would result in discrediting of those important organs, as in the question of the interpretation and application of the Charter of the United Nations Organization the General Assembly and the Security Council would seem to be less competent and qualified than the International Court."³⁹ Another Soviet scholar was convinced that "in this connection it is necessary to touch upon the problem what organs have the right to

interpret the Charter of the United Nations. This right belongs in the first place to the Security Council and also to the General Assembly, as they are those main organs of UNO, which in the first place are called upon to enforce the Charter which is impossible without its correct understanding and interpretation. To the Security Council in this connection belongs undisputed priority, as the unanimity principle of the permanent members of the Council has the role of safeguarding and guaranteeing the coordination of contrasting viewpoints of states of differing social orders. This principle should also be followed in cases involving the interpretation of the Charter by the General Assembly. It is illegal to impose upon one group of states an interpretation established by a mechanical majority, just as imposing such decisions which are convenient to one group of nations only."⁴⁰

At the 1946 Peace Conference in Paris the Soviet Union rejected the American and British proposals that disputes as to the interpretation of the Peace Treaties, should be referred to the heads of the diplomatic missions of Britain, United States and the Soviet Union in Budapest and if they failed to agree before the International Court of Justice. The Soviet Union objected to the referral of a future dispute to the Court of Justice. It was finally agreed that:

"Except where another procedure is specifically provided under any article of the present Treaty, any dispute concerning the interpretation or execution of the Treaty, which is not settled by direct diplomatic negotiations, shall be referred to the three Heads of Mission acting under article 35, (of the Peace Treaty). . . Any such dispute not resolved by them within a period of two months shall, unless the parties to the dispute mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary General of the United Nations may be requested by either party to make the appointment."⁴¹

The practical effect of this formulation was that it failed to provide for a sure method for the resolution of disputes arising in the context of the peace treaties. This was convincingly demonstrated by the case of the human rights guarantees involving the interpretation of the same Peace Treaties. The respondent states avoided submission of the case to a decision by the impartial body simply by failing to appoint members of the Commission. Governments of Hungary, Bulgaria and Romania explained their refusal to act contending that the issues raised by their opponents were not disputes within the meaning of the Peace Treaties.⁴² Their standpoint received endorsement from Mr. Kozhevnikov, the Soviet member of the International Law Commission who was convinced that the parties alone had the right to interpret the compromise submitting the dispute to an arbitral tribunal.⁴³

II. SOVIET TREATIES AND PRACTICE

A. General Duty to Settle Disputes

In a number of Soviet treaties the duty to settle disputes peacefully was not connected with any specific technique of dispute settling. A typical example in this respect was the provision in the final protocol of the conference of the delegates of the RSFSR, Estonia, Latvia, Poland in Riga of March 30, 1922, which stated that delegates of the countries represented at the conference "reaffirm solemnly their sincere desire for general peace, as well as their resolution to maintain good relations and resolve their disputes by peaceful means."⁴⁴

A similar general statement may be found in the exchange of notes between the Soviet and German governments of April 24, 1926, in connection with the Soviet-German treaty of Neutrality and Non-aggression which in Point 4 provided that:

"In order to establish a firm basis for the solution without difficulty of disputes arising between them, the two Governments deem it important to initiate negotiations concerning a general treaty for the peaceful solution of disputes which might arise between the two countries in which the possibility of the technique of arbitration and conciliation should be considered."⁴⁵

B. Institutionalized Conciliation

In Soviet arrangements for settling disputes with other countries, conciliation commissions have occupied an important place since the beginning of the Bolshevik regime in Russia.⁴⁶ Usually they are set up as a part of the dispute settling regime, ready to go into action when the situation calls for it.

The first of these agreements was the Treaty with Estonia of December 3, 1919, on the cessation of hostilities which provided (Sec. 7) that in the case of disagreements as regards the execution of the treaty competent front commanders would appoint mixed commissions of three representatives from each side: one commission for the section from the Gulf of Finland to Gdov, and the other from Gdov to the estate of Gudepi. The seat of each Commission was to be determined by agreement between the corresponding front commanders.⁴⁷ Similarly the Soviet-Polish protocol of June 1, 1921, regarding the establishment of the Conciliation Commissions for the solution of the frontier incidents (Sec. 5), gave the Soviet-Polish Conciliation Commissions the task of solving conflict between the military and civil authorities of the parties or conflicts between such authorities and the citizens of the other party, or conflicts between the citizens of the two parties. The Commissions were to analyze the causes of such incidents and to recommend measures to prevent such incidents from taking place.⁴⁸

This technique of dispute settlement was followed in a number of agreements for the settlement of local and minor disputes connected with the frontier regime, water exploitation on the base of international rivers, repatriation, etc. The Soviet Union had agreements covering such disputes with Persia, Poland, Turkey. In addition we have in this category two agreements with Romania dealing with the incidents arising in connection with the navigation on river Dniester of November 20, 1923.⁴⁹

In the long run, this type of agreement led to a system of frontier agreements having a specialized machinery for the settlement of disputes. Examples are the agreement with Poland of August 3, 1925, with Latvia of July 19, 1926, with Estonia of August 8, 1927, with Turkey of August 6, 1928, and with Finland of September 24, 1928.⁵⁰ The dispute solving machinery provided for in these agreements included a commission consisting of an equal number of delegates representing each party which met whenever the situation warranted such meetings. The members of the commission while on the territory of the other party, enjoyed diplomatic immunity.

Disputes were solved when the commission achieved an agreement. Where it was unable to achieve a solution, the matter, would be settled through normal diplomatic channels.

Following the partition of Poland, the Soviet Union and Germany concluded on June 10, 1940, a convention establishing a similar mixed commission for the settlement of frontier disputes and incidents.⁵¹

After World War II the Soviet Union entered into a new system of frontier agreements with her neighbors in Europe and new conventions were concluded with Poland (February 15, 1961),⁵² Czechoslovakia (November 30, 1956),⁵³ with Romania (February 27, 1961),⁵⁴ Afghanistan (January 18, 1958),⁵⁵ and with Finland (June 23, 1960).⁵⁶ These extensive documents provide for an elaborate frontier regime including the creation of the mixed commissions in order to solve frontier disputes.

The mixed frontier commissions which deal with various matters calling for the cooperation of the administrative authorities on both sides of the frontiers consist of frontier commissioners and their deputies, appointed by higher authorities. Their names, places of offices, and administrative functions in the frontier area are communicated to the other party.

Frontier commissioners, armed with proper documents, represent their countries and frontier administrations in all matters and on all occasions requiring common action. The mixed commissions hold periodic conferences to review the outstanding problems of common concern, and to receive requests, complaints, and statements from each party. The Commissioners and their deputies have the right to cross the frontiers at specific points, to submit claims and complaints and moreover to initiate procedures to solve disputes.

The frontier commissioners review and settle by agreement various claims for damages resulting from the official action of the organs of the other party. Each frontier commission may arrange for an extraordinary session

by a simple invitation to his counterpart on the other side of the frontier to attend a meeting on his territory. While on official business in the territory of the other party, the frontier commissioners enjoy diplomatic immunity.

Disputes which cannot be settled by the commissions are referred to the ministers of foreign affairs, to be dealt with through diplomatic channels. A dispute referred to higher authorities may be returned for local settlement with proper instructions agreed to by both parties. The mixed commissions seek to establish, through discussion and presentation of mutual problems *modus vivendi* in which conflicting interests may be satisfied with a minimum of discomfort to the other party.

Another form of the Conciliation Commission employed by the Soviet Union represent the Mixed Commissions established by the Status of Forces Agreements concluded by the Soviet Union with Poland, East Germany, Rumania, Hungary and Czechoslovakia. Of those five treaties the Rumanian treaty is no longer in force as the Soviet Union withdrew its troops from that country in 1958. In addition to various other problems the treaties have provided for the settlement of mutual claims for damages caused either to individual or state property of the host countries, or to the Soviet military units. The principal method of conflict resolution in this connection is amicable settlement.⁵⁷

Claims for damages which cannot be settled amicably go either to a mixed commission composed of representatives of the two countries, which decides by unanimous vote, or to the courts of the host country. Mixed commissions are competent to deal with claims in which material damage to the host country resulted from action or neglect by Soviet military units, or their members on active duty, and in all cases when similar damage was caused to local institutions, citizens of the host country, or foreign citizens permanently residing in the host country. Similarly, mixed commissions have jurisdiction in cases involving claims against Soviet military units as such.

In contrast, claims arising from actions or neglect by members of off-duty Soviet forces or members of military families are heard by local courts. As a matter of principle, the Soviet government accepts liability for the payment of damages awarded by local courts in such cases (Article 15 of the Polish treaty). In return, the host country accepts liability for damages caused either to Soviet military units, their members, or members of their families by the institutions of the host state or its nationals (Article 14 of the Polish treaty).

While in the territory of the host country, Soviet troops have the use of various installations and military establishments, which raises the question of their maintenance or expansion, or the acquisition of new facilities. Special procedures have been provided for the return of military installations no longer needed by the Soviet forces, and for the disposition of mutual claims regarding the financial outlay for the building of new facilities or the expansion of old ones and for damage done to them. All such problems come under the jurisdiction of the mixed commissions, which have been given

broad powers to deal with issues arising in the process of application of treaty provisions.

According to Article 19 of the Polish treaty:

"To settle problems arising in connection with the interpretation and implementation of this agreement and agreements provided for in this agreement, a Polish-Soviet Mixed Commission is hereby appointed to which each of the Contracting Parties shall appoint three of its representatives.

"The Mixed Commission shall act on the basis of the rules adopted by it.

"The seat of the Commission shall be in Warsaw.

"When a Mixed Commission is unable to settle a question referred to it, this matter shall be settled through diplomatic channels in the shortest possible time."

The Czechoslovak treaty differs from the other three status of forces agreements in this respect that the settlement of mutual claims is the responsibility of the plenipotentiaries appointed for that purpose by the Soviet and Czechoslovak governments.

C. Conciliation as a General Clause

In addition to specific situations, the Soviet Union also employed conciliation as a general technique of dispute settling in connection with its diplomatic efforts to strengthen its international security. Conciliation was a corollary of the agreement not to use force in the settlement of international disputes with Russia's neighbors expressed in a series of non-aggression treaties or other similar agreements. One of the most important treaties of this type was the Soviet-German Conciliation Convention of January 25, 1929. The Soviet Union had similar conciliation conventions with Finland and the three Baltic republics (Estonia, Latvia and Lithuania). Poland and the Soviet Union established a duty to settle their disputes by conciliation in the Polish-Soviet Non-Aggression Treaty of November 29, 1932, and a similar obligation was established in the Soviet-Italian Treaty of Friendship, Non-aggression and Neutrality of September 2, 1933. However none of these treaties and conventions survived World War II.

D. Conciliation in Lieu of Arbitration

1. Conciliation in the Peace Treaties of 1947

The series of 1947 Peace Treaties which terminated the war with Italy, Romania, Bulgaria, Finland, and Hungary have established a different conciliation procedure. In this procedure a pure conciliation stage was supplemented by one in which the conciliation commission acquired powers not usually associated with its functions. According to its classical meaning:

conciliation is the process of settling a dispute by referring it to a commission of persons whose task it is to elucidate the facts and . . . make a report containing proposals for a settlement, but which does not have the binding character of an award or judgment.⁵⁸ A comparison of the classical international law position with article 87 of the Italian Peace Treaty⁵⁹ will indicate the extent to which Soviet practice in this context diverges. Article 87 reads as follows:

"1. Except where another procedure is specifically provided for under any Article of the present Treaty, any dispute concerning the interpretation or execution of the Treaty, which is not settled by direct diplomatic negotiations, shall be referred to the Four Ambassadors (of the main powers) acting under Article 86 except that in this case the Ambassadors will not be restricted by the time limit provided in that Article. Any such dispute not resolved by them within a period of two months shall, unless the parties to the dispute mutually agree upon another means of settlement, be referred at the request of either party to the dispute to a Commission composed of one representative of each party and a third member selected by mutual agreement of the two parties from nationals of a third country. Should the two parties fail to agree within a period of one month upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

"2. The decision of the majority of the members of the Commission shall be the decision of the Commission, and shall be accepted by the parties as definitive and binding."

According to article 86, the Ambassadors of the four main powers shall during the period of 18 months represent all other members of the United Nations as regards the execution of the Peace Treaty with Italy.

The provisions of corresponding articles in the Peace Treaties with Bulgaria, Finland, Hungary, Romania, do not provide for the intervention of four ambassadors. Rather, disputes which cannot be settled in direct negotiations between parties involved are referred to a Conciliation Commission composed of an equal number of representatives of the United Nations Governments concerned and the Bulgarian Government. If agreement has not been reached within three months either Government may require the addition of a third member to the Commission, and failing agreement between the two governments on the selection of this member, the Secretary-General of the United Nations may be requested by either party to make the appointment.

"The decision of the majority of the members of the Commission shall be the decision of the Commission and shall be accepted by the parties as definitive and binding."

While the provisions of the peace treaties may be regarded as a compromise between the views of the Soviet government and those of its western partners, the same type of conciliation commission was eventually adopted for the Danubian regime.

2. The Danubian Conciliation Commission

The Belgrade Convention of August 18, 1948, which established the new regime for the Danube, also provided for a conciliation procedure. During the Belgrade conference (1948) the Western powers proposed that disputes arising in connection with the administration and implementation of the convention should be subject to the compulsory jurisdiction of the International Court of Justice. This idea was rejected and the Convention of 1948, which was based on the cooperation of the riparian powers, preferred to use a method more closely akin to the power situation upon which the new regime rests.

According to Article 45 of the Convention:

"Any dispute arising between the parties to the present Convention concerning its application and interpretation, which has not been solved by direct negotiations, shall be transmitted on request of any of the disputants for the decision of a Conciliation Commission. The commission shall consist of one member appointed by each of the litigating parties and a third who shall be a national of a third Danubian state not involved in the dispute, appointed by the chairman of the Danubian Commission. If the chairman of the Danubian Commission is a national of one of the litigating parties, the appointment shall be made by the Commission.

"The decision of the Conciliation Commission is final and has an obligatory force for the litigating parties."⁶⁰

Later the jurisdiction of the Conciliation Commission was extended to include disputes arising from the interpretation of the technical rules adopted for Danubian navigation. Under Article 81 of the General Rules of Danubian Navigation of June 2, 1951: "Disputes regarding construction of the General Rules of Danubian Navigation . . . shall be subject to the procedure provided for in Article 45 of the Convention on the Regime of Navigation on the Danube."⁶¹

The convention provided no rules of procedure for the Conciliation Commission, nor was the commission authorized to adopt its own rules. This leaves the Commission free to act in the manner best suited to the occasion and to the circumstances of the case, in order to establish both the extent of the disagreement between the parties to a dispute and the procedure for a composing of their differences.

It must be noted, however, that in spite of its name the Conciliation Commission, under the terms of Article 45 of the Convention of 1948, is not a true conciliation body. Where its efforts to compose a dispute have failed, the commission presumably had the right to make a final decision, a function beyond the powers of a true conciliation commission.

There are no reports on the disputes settled by the Danubian Conciliation Commission, although Yugoslav difficulties with other members of the Danubian regime should have offered ample opportunity for its utilization.

E. Mediation

Some of the early Soviet treaties and agreements with other countries, concluded to liquidate some of the problems created by World War I, provided for good offices and for mediation by individuals or international organizations to resolve difficulties arising in the execution of such agreements. This in particular was practiced in treaties and conventions dealing with the repatriation of Russian and foreign prisoners of war and the disposition of Russian property on the territory of other countries (Russian merchant shipping) etc. So, for instance, the Soviet-German agreement of April 19, 1920, on the exchange of prisoners of war, provided that organization of the transports would be the responsibility of the International Red Cross, and that the International Red Cross would conduct negotiations with third states so as to organize transportation through their territories.⁶² Similar arrangements were made in the Exchange of Prisoners of War and Internees Agreement with Hungary of July 28, 1921.⁶³ This agreement covered the exchange of the Hungarian prisoners of war for the Hungarian communists interned in Hungary after the suppression of the communist regime in Hungary. The agreement provided for the dispatch of a neutral person to ascertain whether the Hungarian communists desired to be exchanged and expatriated to Russia. Similarly, the exchange itself was also to be performed by a third state agreed to by both parties.

An interesting form of mediation is to be found in the provisions of the Soviet-German agreement of April 23, 1923,⁶⁴ regarding the disposition of merchant ships that were in the hands of the other state. The agreement provided that disputes arising in connection with the execution of the treaty would be settled by a decision of a commission consisting of two appointed members from each state. Should the commission be unable to make a decision, they were empowered to elect a "neutral mediator," and should they be unable to agree on his person, they could then request Dr. Fritjof Nansen to appoint such a mediator.

Another early example of the institutional use of the mediation service for a specific purpose was the agreement between the All Russian Cooperative Union (Tsentsosoiuz) and a concern of Swedish firms of May 15, 1920, which provided that in case of disputes arising from the contracts between the parties, they would be settled by a Tribunal of Arbitration consisting of two representatives from each party and a superarbiter elected by them. Should they fail to agree upon the person of the superarbiter, he would be appointed by the Presidium of the Chamber of Commerce of Berlin.⁶⁵

Mediation and good offices are techniques of dispute settling which frequently rely for their effectiveness upon the person of the mediator and his understanding of the political aspects of a situation. Mediation and good offices are informal in nature and frequently very effective when a spontaneous offer is received from a third party, not predicated necessarily

upon the basis of an earlier agreement between the parties concerned.

In the early days of the Soviet regime, mediation of third parties, neutral governments, diplomatic officials (French consuls in Denmark and Sweden) brought about agreements between the Soviet Union and other countries regarding the exchange of hostages by the Soviet government and Soviet agents engaged in subversion in other countries. The exchange of Maxim Litvinov and his associates detained for subversive activity in England for the members of the British diplomatic mission in Russia⁶⁶ was arranged through the cooperation of the Swedish authorities. In both 1926 and 1945 the French government mediated in the Soviet disputes with Switzerland. The British government brought about the reestablishment of Soviet-Polish relations following the German attack on the Soviet Union in June 1941. On the other hand, the Soviet Union itself rendered important services to other countries by mediating their disputes. The efforts of the Soviet Government also resulted in the Tashkent Conference in June 1966 between governments of India and Pakistan which terminated the undeclared war and hostilities between the two countries.

In certain situations, however, Soviet mediation in relations between other countries was really a form of pressure upon one of the governments concerned to make concessions in line with the Soviet interests, e.g. intervention in the Chinese-Mongolian relations in 1921 and 1945.⁶⁷

F. Arbitration and the Judicial Process

Among the various methods of dispute settling, international arbitration and the judicial process are those which enjoy least confidence of the Soviet government. Only occasionally has the Soviet government accepted compulsory jurisdiction of arbitral or judicial bodies, and then only as a concession to an ad hoc situation, and never in matters which could affect vitally the interests of the Soviet state.

The basic Soviet attitude to international adjudication was expressed quite early in the period when the Soviet Union entered into normal relations with other countries. Maxim Litvinov speaking for the Russian delegation at the Hague Economic Conference (1922) declared that it was impossible to accept a proposal for the arbitration of disputes involving the ownership of certain enterprises in Russia. "Only an angel," he said, "would be capable of the necessary impartiality." It was necessary to face the fact that there was not one world but two, a Soviet world and a non-Soviet world . . . because there was no third world to arbitrate, he anticipated difficulties. One party would put forward a communist judge . . . while the other, perhaps would propose the Chairman of the League of Nations. None of the suggestions which had been made so far were acceptable.⁶⁸

At that particular time the question of the allocation of various enterprized existing in Russia for development and exploitation by foreign capital

was of crucial importance, because in the eyes of the Soviet regime, it involved the fundamentals of the new social and economic order based as it was upon the public ownership of the means of production, and the nationalization of industrial property in Russia.

In its reply to the Permanent Court of International Justice invitation to cooperate in its proceedings for an advisory opinion in the case of Eastern Carelia, the Soviet Government categorically refused "to take any part in the proceedings." Moreover, the Soviet Government viewed the placing by the Finnish Government of the Carelian question before the League of Nations, as an act of hostility against the Russian Federation. Furthermore, the Russian government declared that it "absolutely repudiated the claim of the so-called League of Nations to intervene in the question of the internal situation of Carelia and stated that any attempt on the part of any power to apply to Russia the article of the Covenant of the League relating to disputes between one of its Members and a non-participating State would be regarded by the Russian Government as an act of hostility to the Russian State: "Russian Government categorically refuses to take part in the examination of this question by the League of Nations or by the Permanent Court. Apart from the considerations of law, according to which the question of the status of Carelia is a matter of Russian domestic jurisdiction, the Soviet Government is compelled to affirm that it cannot consider the so-called League of Nations and the Permanent Court as impartial in this matter, having regard to the fact that the majority of the Powers belonging to the League of Nations have not yet accorded the Soviet Government *de jure* recognition, and several of them refuse even to enter into *de facto* relations with it."⁶⁹

Lack of basic confidence in the ability of the capitalist world to do justice to the Soviet Union was one of the reasons for the Soviet Union's refusal to accept proposals for a collective security system as the basis of disarmament programs during the interwar years. Speaking to the General Commission charged with the work of preparation for the Conference on Disarmament Litvinoff, the chief delegate of the Soviet Union on the French proposals for the system of collective security, stated that the question of the collective sanctions against an aggressor and the determination of who the aggressor was :

"is of great interest to all States, but is of special interests to the State which I represent, and on this point more than on any other, perfect frankness and mutual understanding are indispensable."

"We represent the only country in the whole world which has altered its political system, created a perfectly new political system of Soviets and destroyed capitalism, and which is building up a new social order, while all the other States have preserved the capitalist regime. You are aware that the phenomenon of a Soviet socialist state was³⁰ distasteful to the whole capitalist world that, at the time, attempts were even made by the way of intervention to restore capitalism in our country, or at least by way of dismemberment to reduce the dimensions of the new state." He declared that the hostility

of the capitalist world to the Soviet Union still continued:

"In such circumstances it is permissible to inquire whether the Soviet Union may expect a fair attitude towards it and an impartial decision from any international organ, when such an organ consists exclusively of representatives of the governments of countries boycotting it. It seems to me there can be no two answers to this question, and, should anyone here doubt this, I would recommend him to imagine, for the same use of hypothesis, that his own state is the only capitalist country in the midst of countries which have established the Soviet system and are building up socialism, and I would ask him to tell us if he thinks his country would entrust the solution of questions vital to itself to an international organ consisting exclusively of representatives of the governments of Soviet countries.

"A moment's thought will show why the Soviet Union, as long as the present attitude to it lasts, cannot agree to acknowledge as binding upon itself the decisions of such international organizations as the Assembly or the Council of the League of Nations, existing international tribunals and arbitration courts, although by no means rejecting in principle the idea of international cooperation or arbitration. This question becomes acute for us every time there is talk of setting up international organs with judicial, controlling and similar functions. It is natural enough, in such circumstances that we should demand a composition of these organs which should ensure for us the same measure of impartiality and fairness as is enjoyed by other states, and such a demand will have to be made by the Soviet delegation when, in consequence of the French proposals, the question of the establishment of such organs comes up for discussion."⁷⁰

Soviet attitude was consistently maintained during the post World War II period. At the Paris Peace Conference Soviet delegate Vyshinskii speaking in the Commission on political and territorial questions for Italy (September 1945), rejected the Australian proposal to establish a European Court of Human Rights. According to Vyshinskii such a Court would be a violation of national sovereignty. The purpose of the Australian proposal, he reasoned, was to submit the countries with whom peace treaties are to be concluded to the obligatory jurisdiction of the Court. This would be doubly offensive as according to the Australian proposal private individuals would be given the *locus standi* in the Court even against their own governments.

Turning then to the joint British, French and American proposal to submit disputes related to the enforcement and interpretation of the Peace Treaties to the decision of the International Court of Justice, Vyshinskii declared his opposition to this motion because disputes of this type were not a proper area of judicial activity. Such disputes in his view, should be resolved by a decision of the Ambassadors of the Four Main Allied Powers. Vyshinskii continued "The Soviet delegation is opposed to entrusting these disputes to the International Court also for that reason that it provided for the compulsory jurisdiction of the Court. The Soviet Union in principle is opposed to submission of disputes to the Court on the basis of compulsory

jurisdiction. Decisions of the international court ought to have a binding force, but submission of a dispute to the court ought to be facultative and be agreed to in each separate case. The Soviet government insists on the voluntary submission of disputes to the International Court of Justice in each case. This is provided for in the Charter of the United Nations which was signed by the Soviet Union. Therefore the Soviet Union is unable to accept a proposal, which is contrary to the principle which was the condition for appending the signature of the USSR to the Charter."⁷¹

From the perspective of the entire period beginning with the first years of Soviet relations with other countries, it is clear that Soviet objections to arbitration and the judicial settlement of international disputes have changed. Initially there was no legal platform for an objective decision in disputes between a socialist and a capitalist state. Following World War II, the Soviet Union became a member of the United Nations, and a party to the Statute of the International Court of Justice. The Soviet government acknowledged that it was capable of the objective resolution of international controversies, but continued to object, not to the arbitration and judicial process as such, but to the compulsory jurisdiction of arbitral and judicial tribunals that were established before a dispute arose. Without a prior agreement to submit a dispute for a judicial decision, arbitral or judicial decisions could not be valid. This is due to the new shape of the international society recognized in the provisions of the Charter which sanctioned a broader concept of domestic jurisdiction in order to protect smaller nations from interference of more powerful states through the action of international organizations.⁷²

The Soviet practice generally and the position of socialist judges in the Peace Treaties case, suggests a division of international disputes into two categories, those which may be settled by arbitration or judicial decision, and those which more efficiently could be handled otherwise. Categories of disputes capable of judicial resolution are not determined by the ability of judicial or arbitral bodies to handle the issues involved, but by other criteria. An illustration of what is said here may be found in the case involving Interpretation of the Peace Treaties with Bulgaria, Hungary and Rumania.⁷³ The issue was that of human rights being denied to Bulgarians, Hungarians and Romanians because of the suppression of opposition parties that would have prevented the conversion of these three nations into socialist countries based on the Soviet model. Obviously the communist regimes of these countries, and the Soviet government itself, could not risk judicial investigation of the facts connected with the enforcement of the peace treaties.

As the attitude to arbitration or international adjudication is dictated by political considerations, it is sometimes politically expedient to accept arbitration or even the compulsory jurisdiction of international judicial bodies.

During the Soviet conflict with Great Britain in 1924 when the so-called Zinoviev letter was being used by the British government in order to challenge the extent of Soviet ideological propaganda in Britain, the Soviet govern-

ment actually offered to submit the question of the authenticity of the letter for the decision by arbitral tribunal.⁷⁴ During the abortive Moscow Conference for the limitation of armaments in December 1922, Soviet government declared itself ready to accept arbitration for the resolution of its disputes with the other states, provided the conference reached an agreement concerning the limitation of the sizes of their national armies and budgetary expenses for their national defense.⁷⁵

While the Soviet government in its practice does not rely on arbitration or judicial procedure for the settlement of its disputes with other countries, it is convinced that an open rejection of judicial settlement would reflect badly in foreign propaganda. In order to counteract the adverse effects of such a declaration in American public opinion after the Moscow and Hague conferences (1922), Litvinov in his instructions to Skvirski, the unofficial representative of the Soviet government in the USA stated that:

"We do not reject arbitration on principle. Not only have we accepted the Polish proposal submitted at the Moscow conference to resort to arbitration to solve disputes, but we have suggested to apply arbitration even to territorial disputes, which was rejected by all other delegations. The difficulty is in finding neutral, impartial judges, and the question is reduced to this: can Russia acknowledge at this moment the existence of such countries that would be able to take a really objective position in the resolution of problems concerning Russia."⁷⁶

At times the Soviet Union agreed to submit its disputes for a decision of an arbitral tribunal, or a judicial body. The Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, of July 13, 1931, to which the Soviet Union adhered, stipulated that the disputes as to interpretation of its provisions be submitted to arbitration. The same applied to the International Opium Convention of February 19, 1925.

In 1935 the Soviet Union was involved in a dispute with the government of Uruguay which asserted that the Soviet mission in that country was used to foment and support the communist movement in Brazil. On those grounds, Uruguay broke off its diplomatic relations with the Soviet Union. In reply, the Soviet Union offered to submit this question to an inquiry under the auspices of the League of Nations, or for decision by a court of arbitration.⁷⁷

Another example of an acceptance of arbitration was the Soviet-German non-aggression pact of August 23, 1939. Article 5 of that treaty provided that disputes between them would be settled by a friendly exchange of opinion, or commissions of arbitration.⁷⁸

Finally, it must be noted, that none of these agreements and treaties mentioned have actually been tested in an arbitral adjudication.

NOTES

- ¹ *ILC* (1963) 51.
- ² *Pravda*, Jan. 4, 1964.
- ³ *Pravda*, Sept. 24, 1964.
- ⁴ 54 *AJIL* (1960) 476.
- ⁵ G. V. Chicherin, *Statii i rechi po voprosam mezhdunarodnoi politiki*, (1961) 208-09.
- ⁶ L.O.N. Publications 1928 IX (Disarmament) C. 667, M. 225. 1927, IX, 9.
- ⁷ *Izvestia*, March 9, 1955.
- ⁸ *ILC*, 1953, 43, cf. *ibid.* 259.
- ⁹ *ILC*, 1963, 58.
- ¹⁰ *Ibid.* (1963) 170.
- ¹¹ *Ibid.* (1956) 97.
- ¹² Admission of a State to the United Nations *ICJ Rep.* (1948) 57, 106.
- ¹³ *Id.* at 107.
- ¹⁴ Certain expenses of the United Nations *ICJ Rep.* (1962) 151.
- ¹⁵ *Id.* 229.
- ¹⁶ *Id.* at 230.
- ¹⁷ Effects of Compensation made by the U.N. Administrative Tribunal *ICJ Rep.* (1954) 47.
- ¹⁸ *Id.* at 65.
- ¹⁹ Corfu Channel Case, *ICJ Rep.* (1949) 4. "Contrary to the opinion of the majority of the judges, I consider that there is no such thing as a *common* regulation of the legal regime of straits. Every strait is regulated individually. That applies to the Bosphorus and the Dardanelles, to the Sound and the Belts, to the Straits of Magellan, etc. The legal regime of all these straits is defined by the respective international conventions . . . If the regime of the strait is not defined by a multilateral convention, it appertains to the coastal State or States to regulate it." *Id.* at 74.
- ²⁰ Reparation for Injuries Suffered in the Service of the United Nations, *ICJ Rep.* (1949) 174, 217 (advisory opinion).
- ²¹ South West Africa Cases, *ICJ Rep.* (1962) 319, 453 (preliminary objections).
- ²² Interpretation of Peace Treaties *ICJ Rep.* (1950) 65, 89 (advisory opinion).
- ²³ *Id.* at 94.
- ²⁴ *Id.* at 96.
- ²⁵ *Id.* at 96-97.
- ²⁶ *Id.* at 109-13.
- ²⁷ *ICJ Rep.* (1950) 65.
- ²⁸ *Id.* at 90.
- ²⁹ *Ibid.* Cf. Rosenne, *The International Court of Justice* (1957) at 40.
- ³⁰ Interpretation of Peace Treaties Case, *ICJ Rep.* (1950) 65, 101-02 (advisory opinion) (Zoricic, J., dissenting); Cf. *id.* at 111 (Krylov, J., dissenting). Judgments of the Administrative Tribunal of the I.L.O. upon complaints made against the UNESCO, *ICJ Rep.* (1956) 77, 105-06 (dissenting opinion).
- ³¹ Interpretation of Peace Treaties Case, *supra* note 22, at 70-71.
- ³² Certain Expenses of the United Nations, *ICJ Rep.* (1962) 151, 268.
- ³³ Admission of a State to the United Nations, *ICJ Rep.* (1948) 57, 106.
- ³⁴ *Id.* at 108.
- ³⁵ *Id.* at 107-08.
- ³⁶ *Id.* (1962) 230.
- ³⁷ Article 26 of the Statute of the International Court of Justice.
- ³⁸ Shurshalov, *Osnovnye voprosy teorii mezhdunarodnogo dogovora* (1959) 453; *Delegatsii SSSR, USSR i BSSR na vtoroi' sessii Generalnoi Assamblei Organizatsii Objedinonnikh Natsii* (1948) 548-49.
- ³⁹ Shurshalov, note 38, 453-54.
- ⁴⁰ Morozov, *Organizatsia Objedinonnikh Natsii* (1962) 206.

⁴¹ Article 36 of the Treaty with Bulgaria, Article 40 of the Treaty with Hungary, and Article 38 of the Treaty with Romania.

⁴² *ICJ Rep.* (1950).

⁴³ *ILC* (1953) 23.

⁴⁴ *Dok.* 5, 173-75.

⁴⁵ *Dok.* 9, 252-54. For the full list of similar agreements see: Triska, Slusser, *The Theory, Law and Policy of Soviet Treaties* (1962) 516.

⁴⁶ *Ibid.* 382.

⁴⁷ *Dok.* 2, 317.

⁴⁸ *Ibid.* 4, 150.

⁴⁹ *Ibid.* 6, 512.

⁵⁰ Cf. *SDD* 2, 70; *Ibid.* 4, 38; *Ibid.* 4, 49; *Ibid.* 6, 29; *Ibid.* 5, 38; *Ibid.* 2, 191.

⁵¹ *Pravda*, June 16, 1940.

⁵² *Ved.* (1961) no. 40.

⁵³ *Ibid.* (1957) no. 5.

⁵⁴ *Ibid.* (1961) no. 32.

⁵⁵ *SDD* 20, 89.

⁵⁶ *Ibid.* 21, 25.

⁵⁷ See *supra*.

⁵⁸ Oppenheim, *International Law* II (7th ed.), 12.

⁵⁹ 42 *AJIL* Supplement, 1948, 49.

⁶⁰ *STM* 328.

⁶¹ *Ibid.* 344.

⁶² *Dok.* 2, 459.

⁶³ Annex, *Ibid.* 3, 242.

⁶⁴ *Ibid.* 6, 266.

⁶⁵ *Ibid.* 2, 522.

⁶⁶ Cf. *supra*.

⁶⁷ Triska, Slusser, note 45, 382.

⁶⁸ Netherlands, Department of Foreign Affairs, *Conference at the Hague, June 26-July 20, 1922, Minutes and Documents, Fourth meeting with the Russian Commission, Second, Non-Russian Subcomm. Debts.* Government Printing Office (1922) 128.

⁶⁹ *PCIJ B* no 5, 12-14.

⁷⁰ L.O.N. IX, *Disarmament* (1933), IX, 10, 236. Feb. 6, 1933.

⁷¹ *VPSS* (1946) 357-58.

⁷² See *supra* opinion of Judge Krylov.

⁷³ See *supra*, also *ICJ Rep.* (1950).

⁷⁴ Note of the Soviet diplomatic representative in Britain to Austin Chamberlain, Nov. 28, 1924, *Dok.* 7, 556.

⁷⁵ *Dok.* 6, 39.

⁷⁶ *Dok.* 6, 156-57; cf. Triska, Slusser, note 45, 387.

⁷⁷ Triska, Slusser, note 45, 387.

⁷⁸ *Nazi-Soviet Relations* (1948) 76-77.

Chapter IX

PROPAGANDA—THE PERMISSIBLE MEANS OF STRUGGLE

The right to respect is one of the long established fundamental rights which protects that aspect of a state's international personality which in human relations may be equated with dignity, honor or good name. An attack upon the respect due to a state, its authorities, missions, its head of state or representative institutions is a form of aggression, or intervention, and in a sense an act of violence. In modern times this type of attack has acquired added significance because it takes the form of subversive propaganda, inciting to revolution, sedition and sabotage. Although not employing force, hostile propaganda is deemed to constitute an attack upon the authority of another sovereign, and is therefore contrary to international law.¹

The appearance of the Soviet Union as a member of the world community seriously affected the force of international law which prohibits propaganda attacks upon other states and therefore introduced a new element into the diplomatic relations between states maintaining diplomatic relations and economic and cultural exchanges.

I. PROPAGANDA OF THE PERIOD OF WAR COMMUNISM

The new regime installed by the October Revolution of 1917 was faced with chaos, armed resistance, and foreign aggression. The revolutionary authorities that took over functions of government paid no heed to the commands and decrees of the central government, while the political opposition and the suppressed nationalities organized counter coups or prepared to establish their own national states. The greatest imminent danger to the existence of the new revolutionary regime came from the West, where the continued advance of the armies of the Central Powers threatened the Bolshevik power.

In this situation propaganda was the only weapon the new regime had and the only technique of political action with which it was familiar. Indeed, the Bolsheviks attainment to power and their position as the ruling party in Russia were from the start exploited as another channel for propaganda action. The first acts of government, especially the new decrees, were really acts of propaganda, thinly disguised as legislative activity. Soviet decrees of this period had little chance of being enforced, and even in the eyes of their authors were not designed to have serious binding effect. They were,

according to the recollections of Trotsky, "the program of the Party uttered in the language of power" and, as such, "means of propaganda rather than acts of administration."² Lenin, writing in the first days of the new regime, justified the feverish legislative activity of his government as follows:

"It does not matter that many points in our decrees shall never be carried out; their task is to teach the masses how to take practical steps . . . We shall not look at them as absolute rules to be given effect under all circumstances."³

Examples of this type of legislation are too numerous to be listed exhaustively. The first act of the new revolutionary government, the Decree on Peace of October 28 (November 8), 1917, invited "all belligerent nations and their governments to begin immediate negotiations for a just and democratic peace."⁴ This decree was followed by the decree containing the declaration of rights of the nations of Russia,⁵ later came a note of November 8, 1917, addressed to the diplomatic representatives of the Allied Powers in Russia concerning armistice and immediate peace negotiations,⁶ then came the announcement of the People's Commissar for Foreign Affairs concerning publication of secret treaties,⁷ an appeal of the Soviet government to the Moslem Toilers of Russia and the East,⁸ etc.

Underlying all these legislative, diplomatic, and administrative acts was the conviction that the tide of the revolution was about to engulf practically all the countries involved in the war. Thus, Lenin held that the war had reached the moment when it was transformed from an imperialistic into a revolutionary war.⁹ Looking at the general situation the Soviet leaders thought that the program of the world revolution could be implemented without delay. They saw the beginning of a mighty revolutionary wave in the German and Austrian labor unrest, war exhaustion in the West, and troop mutinies in the Allied armies. Consequently, the paid little attention to the inability of the Russian armies to resist effectively German and Austrian advances on the Russian front. In order to win the revolution in Russia and to carry it west, Bolshevik leaders did not hesitate to subvert the discipline in Russian armies hard pressed by the enemy.¹⁰ They believed that the weakness of Russian arms would be more than counterbalanced by the disruptive effects of communist propaganda and troop fraternization on the front, which they thought would destroy the discipline and the will to fight of the enemy armies. This understanding of the world situation conditioned the techniques and tenor of the Soviet propaganda.

The Bolsheviks made no distinction among the Allies, enemies, and neutral powers. In its diplomatic and propaganda activity, the Bolshevik government addressed itself to the masses, which in its opinion were seething with revolution and which it proposed to mobilize in the great struggle for the new order. For instance, on November 28, 1917, the Council of the People's Commissars of the RSFSR addressed an appeal to the peoples of the belligerent nations asking them to join the Soviet government in negotiations for an immediate armistice. A similar technique was followed in the Appeal to the Moslem Toilers of Russia and the East of December 7, 1917,¹¹ the

Appeal to the Toilers of Oppressed Peoples of Europe of December 9, 1917,¹² and the Appeal to the Peoples and Governments of the Allied Countries of December 17, 1917.¹³ As time went on, Soviet appeals to the "toilers and workers" of the world, or of particular countries, were replaced by appeals to the specific workers' organizations. For example, on May 4, 1918, the Soviet government appealed to the trade unions of the world to support the Soviet republic in its struggle for peace.¹⁴

The technique of direct appeals to the masses of other countries was not affected by the actual status of Soviet contacts with the governments of the countries concerned. The Brest-Litovsk peace negotiations with the Central Powers proceeded to the tune of a massive propaganda campaign exhorting their populations to support the policy of the revolutionary regime.¹⁵ The signing of the Brest-Litovsk Peace Treaty had no effect upon the flow of the Soviet propaganda against the Central Powers in spite of the provisions it contained on the subject.¹⁶

Once the Central Powers were forced to acknowledge their defeat by the Western Powers, the Soviet Union intensified its propaganda activity, combining its notes addressed to the republican government of Germany with appeals to the revolutionary organizations which came into being in Germany during the turbulent days of November 1918. The Soviet diplomatic correspondence with the new German government concerning withdrawal of German troops from the occupied territories, etc. was communicated to the German soviets of soldiers and workers. While on one hand, the Soviet government sought support for its demands in its political action, on the other, it was contributing to the political education of the revolutionary leaders in Germany. It was convinced that the republican regime in Germany was a transitory stage, and that, eventually, it would be, as it was in Russia, replaced by a workers and peasant government, leading to a revolution which was to mirror the Russian Revolution.¹⁷

Eventually, however, the new Russian regime was forced to realize that its hopes that German armies in the occupied territories would succumb to the revolution would not be fulfilled, and that the presence of German armies in the western Russian territories and their withdrawal home were no longer controlled by the German government, either in its official form or in its revolutionary incarnation. It became apparent that German armies in Russia would observe the conditions of the Armistice Agreement of November 11, 1918, that the Western Allies were to control the withdrawal of German troops from Russia, thus providing a measure of protection to the incipient national regimes in eastern Europe. This fact brought the full blast of Soviet propaganda directed to the revolutionary forces in the West.¹⁸

In time, when the Soviet Union had regained its place in the community of nations, Soviet official propaganda addressed to the masses in support of its policy had to be replaced by other techniques. The method was reserved for moments of crisis and intense political struggle. It was revived in the

time of the Second World War and later during the so-called "Cold War." It was also used in situations when Soviet leaders could address themselves to a foreign people from the position of a major allied power which acquired special responsibilities due to the political settlement following the Second World War. A further example of this technique is to be found in a series of Khrushchev's speeches connected with so-called atomic diplomacy.¹⁹ Another unusual example of direct address by a Soviet leader to a foreign people was Stalin's New Year's message to the Japanese in 1952.²⁰

The rationale behind this direct approach was that the Soviet government was only formally a government of one country; it was also a leader of the world working class. During the Brest-Litovsk negotiations, *Izvestia* (the official organ of the Soviet government) wrote:

"Allied nations ought to be aware of the fact that negotiations were begun and shall continue irrespective of the course of the Allied diplomacy. In these negotiations where *the Russian delegation represents the interests of the entire democratic world*, the fate of all nations is involved, including those whose diplomats refuse to participate in them."²¹

After the Second World War the Soviet Union became the representative of the interests of the socialist system, which now includes a number of countries with communist governments. As Khrushchev explained in connection with the Soviet use of the veto power in the United Nations Security Council, creation of the Soviet right of veto gave to the socialist states equal right to influence the course of public affairs in the world.²²

II. RESTRICTIONS ON PROPAGANDA AFTER THE FIRST WORLD WAR

While in the immediate period following the October Revolution (1917) the new regime enjoyed in its isolation a complete freedom of propaganda, the process of returning to normalcy, which became necessary for the survival of the regime, placed serious limitations on the propaganda activities of the Russian government. Provisions of practically all treaties on the settlement of political questions between revolutionary Russia and other members of the international community contained a clause by which the contracting parties exchanged promises to refrain from hostile and subversive propaganda. The German conditions of peace dictated to the Russian delegation at the Brest-Litovsk Conference on February 21, 1918, provided that "Russia shall discontinue all official or officially supported agitation and propaganda directed against the governments or governmental or military institutions of the Central Powers."²³ Article 2 of the Brest-Litovsk Peace Treaty of March 3, 1918, stated accordingly:

"The Contracting Parties shall refrain from all agitation or propaganda directed against the governments or governmental institutions of the other party. Insofar as this obligation is binding on Russia, it applies to those territories which are occupied by the Four Power Alliance."²⁴

While these provisions were honored in breach rather than in observance, sanguine hopes for the world revolution began to wane as time went on, and the Bolshevik government was forced to realize that formal peace with other nations would require that at least the more drastic forms of subversion by propaganda would have to be discontinued. The Armistice Agreement of January 30, 1920, with Latvia, which was one of the first treaties with Russia's western limitrophes, provided (article 22) that Russia would desist from "all propaganda and its support in the territory of Latvia, directed against its government or political or social order."²⁵

Some time later, Soviet efforts to establish relations with Britain caused Lord Curzon to draw up in a memorandum a number of conditions for the recognition of the Soviet regime. These conditions, eagerly accepted by Chicherin, the Foreign Commissar of the Moscow government (Note of July 7, 1920), stated that both parties would refrain from hostile activities, from conducting official propaganda, and from all measures directed against the other party, whether direct or indirect, and against the institutions of the other party. In particular, the Soviet government was to refrain from all efforts, by means of military action or propaganda, to incite the nations of Asia to hostile activity directed against British interests or the British Empire.²⁶

The peace treaties with the three Baltic Republics concluded in 1920 provided that the contracting parties would not support, on their territories, activities of organizations or groups pretending to the role of government of the other party, or aiming at the overthrow of the government of the other party.²⁷ The Polish-Soviet Preliminary Peace Treaty (art. 2) of October 12, 1920, provided that "both contracting parties mutually affirm full respect for their governmental sovereignty and the obligation not to interfere in the internal affairs of the other party."²⁸ The final Peace Treaty of March 18, 1921 (art. V), provided that each of the "contracting parties guarantees full respect for the governmental sovereignty of the other party, and shall refrain from all kinds of intervention in its internal affairs and in particular from agitation, propaganda and all forms of intervention or support for such intervention."²⁹

Almost simultaneously with the Polish peace treaty, the Soviet government entered into a commercial agreement with Great Britain for the reopening of British-Russian trade, which constituted a *de facto* recognition of the government in Russia. The agreement was clearly meant to be a first step in the normalization of international relations between the two powers. Article A of the agreement obligated both contracting parties to refrain from hostile actions or measures directed against the other party, as well as from conducting within its territory official propaganda, whether directly or indirectly aimed at the institutions of the British Empire or the Russian Socialist Republic.

Russia in particular agreed not to undermine the British position in India and Afghanistan, and generally not to harm British interests in Asia, while

in exchange Great Britain agreed to adopt the same policy in the indigenous states which were formerly a part of the Russian Empire. Furthermore, the prohibition of propaganda included also action outside the territory of each contracting party, including all manner of assistance and the support for propaganda activities by others. Finally, both parties agreed to issue proper instructions to their agents.³⁰

The British-Soviet agreement served as a model for a similar preliminary commercial agreement with Italy, signed on December 26, 1921, which repeated almost verbatim the terms of the agreement with Britain.³¹

The abortive Soviet-British General Agreement of August 8, 1924, provided in article 16 that:

"The contracting parties solemnly declare their desire and aim to live with each other in peace and friendship, to respect strictly the indisputable right of the other State to order its life according to its will within the limits of its jurisdiction, to refrain and to prevent all persons and organizations, under its direct or indirect control, including organizations in receipt of financial assistance, from doing acts open or covert, which may in any manner create danger for the peace and welfare of any part of the territory of the Soviet Union or of the British Empire, or impair relations of the Soviet Union or those of the British Empire, with their neighbors or any other countries."³²

Similarly, the exchange of notes between the Soviet and French governments of October 28, 1924, which initiated normal diplomatic relations between the two countries contained the following passage in the Soviet answer to the French initiative:

"As the French Government, the Central Executive Committee of the Soviet Union also considers that mutual noninterference in the affairs of the two parties constitutes an indispensable condition of relations with other countries in general, and in particular in relations with France, and acknowledges a similar declaration of the French Government in this matter."³³

One of the most complete statements of the mutual duties of noninterference in each other's internal affairs by the Soviet Union and capitalist governments was the exchange of notes between Maxim Litvinoff and President Roosevelt of November 16, 1933, prior to re-establishing diplomatic relations between the United State and Russia. The Soviet note (identical in substance to the American reply) ran as follows:

"I have the honor to inform you that coincident with the establishment of diplomatic relations between our two governments it will be the fixed policy of the Government of the Union of Soviet Socialist Republics:

"1. To respect scrupulously the indisputable right of the United States to order its own life within its own jurisdiction in its own way and to refrain from interfering in any manner in the internal affairs of the United States, its territories or possessions.

"2. To refrain, and to restrain all persons in government service and all

organizations of the government or under its direct or indirect control, including organizations in receipt of any financial assistance from it, from any act overt or covert liable in any way whatsoever to injure the tranquillity, prosperity, order, or security of the whole or any part of the United States, its territories or possessions and, in particular, from any act tending to incite or encourage armed intervention, or any agitation or propaganda having as an aim, the violation of territorial integrity of the United States, its territories or possessions, or the bringing about by force of a change in the political or social order of the whole or any part of the United States, its territories or possessions.

"3. Not to permit the formation or residence on its territory of any organization or group—and to prevent the activity on its territory of any organization or group, or of representatives or officials of any organization or group—which makes claim to be the government of, or makes attempt upon the territorial integrity of, the United States, its territories or possessions; not to form, subsidize, support or permit on its territory military organizations and groups having the aim of armed struggle against the United States, its territories or possessions, and to prevent any recruiting on behalf of such organizations and groups.

"4. Not to permit the formation or residence on its territory of any organization or group—and to prevent the activity on its territory of any organization or group, or of representatives or officials of any organization or group—which has as an aim the overthrow or the preparation for the overthrow of, or the bringing about by force of a change in, the political or social order of the whole or any part of the United States, its territories or possessions."³⁴

III. THE COMMUNIST INTERNATIONAL AND SOVIET DIPLOMACY

It was obvious from the beginning that the Soviet government would be disinclined to respect treaty provisions prohibiting hostile propaganda against the regimes of the capitalist countries. Only a few months after the Brest-Litovsk Peace Treaty, the Soviet and German governments were engaged in a lively exchange of charges and countercharges regarding the hostile propaganda which was filling the pages of Russian and German papers. The Russian position was that it was unreasonable to expect the Soviet government to refrain from criticism of the social and economic institutions of the capitalist states or from commenting adversely on their policies. In his reply to the letter of the German consul general in Russia, (September, 1818) the People's Commissar for Foreign Affairs admitted quite candidly that:

"The Soviet government . . . is an organ of revolutionary struggle. It applies drastic measures against its enemies in the civil war, but at the same time it relies upon the revolutionary conscience of the masses, which it

represents, rather than on their passive submission, and in the political camp which it heads it enjoys the authority of the leader of the comrades consciously following the same revolutionary path . . . The Workers' Peasant Government desires that good-neighborly relations and peaceful coexistence (*mirnoe sozhytelstvo*) with Germany be fully established, paying no regard to differences in the order of the two countries, and it is convinced that the German government is equally desirous of peaceful coexistence; at the same time, while pursuing the policy of peaceful coexistence, it [the Soviet government] remains true to its nature, just as the German government, and expects that it [the German government], as the Soviet government, shall reckon with the consequences of these differences, which have not been an obstacle in the development of good-neighborly relations, just recently established, and correspond to the deeply rooted interests of both parties."³⁵

This is probably the first, and the most candid, formulation of that complex of principles that was to govern Soviet relations with the capitalist world. This has been more recently restated in the form of the doctrine of "peaceful coexistence." Peace on the frontiers, correct diplomatic relations, economic and other forms of international cooperation must not be affected by the fact that the Soviet Union at the same time was engaged in an ideological struggle with the capitalist order of things. Thus the Soviet government claimed the right not to conform to the traditional concept of correct international relations between states and governments at peace. The very purpose of the Soviet government was to promote revolution, and it was an instrument of that revolution and of the revolutionary movement. At the time when Chicherin wrote his note in the name of the Soviet government, the Soviet leadership was convinced that the great transformation of the human society, begun by the Russian revolution, was to be expected shortly. It was unrealistic, then, to expect that the Soviet government would desist from the policy which was its very *raison d'être*.

The attitude of the Soviet government could hardly have been countenanced by the German government. On November 4, 1918, Russian couriers were detained, the diplomatic pouch was opened and searched, and the following day, in answer to the Russian protest, the diplomatic mission of the Soviet government was ordered to leave—an event of singular importance in view of the impending German defeat and surrender in the West. At the moment of the long awaited revolutionary upheaval in Germany, Soviet diplomats were absent from Berlin.³⁶

As the days of October receded into history, the regime in Russia, in its quest for respectability and peaceful relations with the members of the international community, was forced to abandon its intransigent position voiced in the note to the German government in November 1918. The Soviet government adopted the position that as a member of the international community it had to refrain from hostile propaganda and intervention into the internal affairs of other countries. It recognized this duty even with regard to states with which the Soviet Union had no diplomatic relations

and no treaty obligations dealing with propaganda activities. This seems to be apparent from the Soviet Foreign Commissar's declaration of September 26, 1924, made in connection with the question of American apprehensions as regards establishing formal diplomatic relations with Russia. The Soviet government, in American opinion, was directly involved in the activities of the Komintern, and as such could not be trusted to adhere to the rules governing the conduct of formal diplomatic relations. Chicherin's answer disclaimed all responsibility for the activities of the Komintern. He drew a parallel between the Communists in governmental positions in Russia and Republicans in the American administration.³⁷ In order to conform to accepted standards, propaganda activity aimed at the promotion of the world revolution was dissociated from the official government of the Soviet Union. The ideal instrument for that purpose proved to be the Communist International (Komintern) created in March 1919 at the Congress in Moscow, dissolved eventually in May 1943.

Originally the Soviet government claimed freedom of the press in order to explain noncomplicity of the Soviet government in the propaganda emanating from Russia. In due course, however, responsibility for propaganda emanating from Russia was disclaimed by the government altogether and was claimed to be organized by the Komintern, which could not be identified with the government of the Soviet Union. Thus the note of September 27, 1921, of Maxim Litvinov (deputy People's Commissar for Foreign Affairs) addressed to Lord Curzon claimed that the Komintern's presence in Russia was due solely to the fact that it was the only country where the activities of the Communist parties were legal. There was in fact as little (or as much) connection between the Soviet government and the Komintern as between the Second International in Brussels and the Belgian government. The fact that there were members of the Soviet government in the Komintern, the note claimed, had as much significance for the government of Russia as the presence of the British and Belgian ministers in the Second International.³⁸

And yet, complaints against Soviet propaganda, whether originating from sources directly identifiable with the Soviet government or those which could be traced to the Komintern, were continuing, and the Soviet government was hard put to impress upon other foreign governments its lack of complicity in the activities of the Komintern or the Profintern (International Union of Trade Unions).³⁹ In the final analysis, the alibi furnished by the Komintern proved inadequate, causing considerable difficulties in Soviet relations with other countries and affecting the flow of trade and economic cooperation between the free-economy countries and the Soviet Union.

One of the most important affairs in this regard was the British-Soviet conflict, a very complex and prolonged affair involving many issues, such as interference with British fishing rights in the Arctic, the treatment of British subjects in Russia, anti-British propaganda in Asia, including action by Soviet diplomatic personnel, and Komintern propaganda. The first phase

of the conflict was liquidated by an exchange of notes (May 29 and July 4, 1923) in which the Soviet government accepted *inter alia* an obligations not only to refrain from propaganda and hostile activities through the medium of its diplomatic agents, but also not to support financially "or by any other means persons, agencies, organizations or institutions which have the aim of spreading disaffection, or supporting rebellion in any part of the British Empire, including British protectorates . . . and to bind all its officials, and official persons, to an unreserved and unfailing observance of these obligations."⁴⁰

The next phase began with the so-called Zinoviev letter, a document of spurious origin, which caused a good deal of concern in Britain and was exploited for anti-Soviet propaganda. In the ensuing correspondence, while denying the authenticity of the letter, the Soviet chargé d'affaires restated the old Soviet position that the Komintern and its activities could not be controlled by the Soviet government. The Soviet note of November 28, 1924, repeated the previous position concerning the "total and organizational independence of the Communist International of the Government of the Union of Soviet Socialist Republics." "My Government," the Soviet chargé d'affaires in London continued, "has never accepted and is unable to accept the obligation to refuse asylum to the Communist International or other workers' organizations, and even more it cannot accept an obligation to exercise influence upon them."⁴¹

The final incident which led to a breach in diplomatic relations with Britain and the denunciation of the Trade Agreement of 1921 was the decision of the Soviet trade unions to support financially and encourage the British coal strike in 1926. This decision caused the British government to complain officially to the Soviet government, and, as the Soviet government's reply was deemed unsatisfactory, on February 23, 1927, the British government lodged a strong protest with a full documentation against the repeated acts of Soviet intervention by means of propaganda into the internal affairs of Britain. While anti-Soviet feeling mounted in Britain, a raid on the offices of the Soviet Trading Corporation (Arcos) on May 11, 1927, led to the seizure and discovery of documents which allegedly proved the complicity of the Soviet trade delegation, which was a part of the diplomatic mission in London, and of the trading corporation in espionage and subversive activities in Britain. As a result, on May 27, 1927, Britain severed diplomatic relations with Russia.⁴²

Another incident which demonstrated a complicity of the Soviet trade organization in subversive activities in a foreign country was the 1924 incident which led to the police search of the premises of the Soviet trade delegation in Berlin and the offices of the Soviet trading organization. In a sense, the Berlin case, although arising from a different set of facts and circumstances, had common features with the incident in Britain in 1927. In both cases the police were faced with the fact that the premises of the trade delegation, which was legally a part of the diplomatic establishment,

were shared by the trade organization, a private (in the receiving country) organization representing commercial interests of the Soviet Union. The two theoretically separate organizations were in fact parts of the single agency, which, owing to its contacts with the social and economic life of the receiving country, could exercise considerable political influence.

The immediate cause of the Berlin incident was the flight of an arrested suspect and his escape from the hands of the German police. The suspect pursued by the police sought refuge in the building of the Soviet trade organization. Members of the organization as well as of the trade delegation (members of the diplomatic mission) interfered with the police and prevented the recapture of the suspect. In retaliation the police raided the premises and brought to light that both the members of the diplomatic corps and the members of the trade organization were deeply immersed in the internal politics of Germany.

The real cause of these difficulties in both Britain and Germany was the fact that members of both the diplomatic mission and the trading organization were revolutionaries with intimate connections in the underground activities in the countries in which they were posted, and were still maintaining these connections while in the employ of the Soviet government. The trade delegation and the trade organization in Berlin were closed on May 14, 1924, and the Soviet-German Protocol of July 29, 1924, which ended the incident, acknowledged that activities of this type were incompatible with the presence of Soviet citizens in Germany in their capacity as agents of the Soviet state:

"The government of the Soviet Union confirms that it, in accordance with the agreements in force and on the basis of reciprocity, has prohibited its official persons and government servants . . . to take part in the domestic political life in Germany."⁴³

A third incident which again compromised a government official (a member of the Soviet foreign service) was the case of the Soviet Ambassador in France, Rakovsky, who, while attending in Moscow the sessions of the Central Committee of the Control Commission of the Communist Party of the Soviet Union, had put his signature to a declaration in which the so-called opposition to the official Party line (Trotsky, Kamenev, Zinoviev) called "for the defeat of all the bourgeois states which carry on the war against the Soviet Union" and declared "that every honest proletarian in the capitalist countries must work effectively towards the defeat of his government" and that "all soldiers of foreign countries who do not desire to help their slavemasters" should desert to the Red Army.⁴⁴

This incident caused the French government to lodge a protest. The Soviet Foreign Commissar, Chicherin issued a statement in which he repudiated the idea that one of the official representatives of the USSR could organize propaganda inciting insurrection in the country in which he was accredited, and that this certainly did not apply to France. However, the damage was done, and in due course Rakovsky was recalled.⁴⁵

These events caused much concern to the Soviet leadership, and on several occasions the Soviet Foreign Commissar warned Soviet foreign service personnel to stay out of politics in the receiving countries.⁴⁶ By 1924, the German and British difficulties convinced the Soviet leadership that a new approach in international relations was necessary and directives for the conduct of Soviet foreign service personnel were enacted.⁴⁷ These directives were a reflection of the difficulties which the Soviet governmental apparatus faced in the area of international relations. One of the important achievements of Soviet policy in this context, the directives pointed out, was that the Soviet Union was able to establish normal relations with a number of countries. The directives acknowledged that occasionally, owing to its specific character, the Soviet state might experience difficulties in its peaceful relations with the capitalist states, but they emphasized that Soviet missions are sent abroad for purposes which rule out propaganda in the countries in which they are accredited and that Soviet missions should adhere to this principle.

At the same time, the directives pointed out, Soviet diplomatic missions represent a state of workers and peasants. It is fitting, the directives suggest, that the conduct of Soviet diplomats should feature simplicity of form, modesty, and absence of ostentation. Soviet diplomatic personnel may refrain, without any adverse effect upon its position, from functions and celebrations which were contrary to the nature of the Soviet state. Similarly, foreign diplomatic personnel in Russia would be excused from participation in similar occasions having a revolutionary character.

The 1924 directives went only half way to meet the objections of the foreign governments as regards hostile propaganda emanating from the Soviet official sources, or the Komintern, and this ambivalent position was maintained in spite of the protests of foreign governments. In 1930 Gorky's letter, broadcasted from Moscow, inciting workers of all states, especially in France and Britain, to oppose their governments' foreign intervention against Russia, caused the British government to protest. In 1935 Ambassador Bullitt protested when the Seventh Congress of the Communist International approved a program of attacks on the economic and political systems of the United States clearly in contravention of the Litvinoff-Roosevelt agreement. The Soviet Union resorted to the usual excuse that it did not control the Komintern and did not assume obligations to silence its propaganda.⁴⁸

IV. PROPAGANDA AT THE CONFERENCE TABLE

The first full demonstration of the Soviet technique of propaganda paralleling negotiations at the conference table was provided by the Brest-Litovsk Peace Conference with the Central Powers. Already during the short negotiations for the armistice agreement the Russian delegation insisted on

discussing basic issues of peace and war and on the right to publish freely materials and documents relating to the course of the negotiations. The immediate goal of the massive propaganda campaign attending the Brest-Litovsk Conference, which began on December 9 (22), 1917, was to broaden it into a general peace conference. If that had happened, the political significance of the Russian military defeat would have been reduced to insignificance. Peace propaganda was also designed to weaken the will to fight in the enemy camp and to cause the outbreak of the socialist revolution in Germany. The Soviet government's appeal addressed to the toilers of Germany asked them to support peace negotiations and peace aims of the revolutionary government. Militarist circles in Germany would be denied the fruits of victory in Russia, and a new world order would be established. "However," the declaration warned, "we shall achieve such peace when all countries shall dictate peace conditions by means of a revolution, and when not only Russia but all other nations shall send to the peace conference delegations representing the popular masses and not those representing the capitalist and militarist circles."⁴⁹

The next opportunity to confront the world with the Soviet concept of international relations was the Economic Conference of Genoa (1922), convened in order to re-establish trade and economic cooperation in Europe, including Russia. The Soviets' chief concern was to solicit trade and economic assistance. And yet, the Soviet chief delegate, Chicherin, considered it essential to open this new phase in Soviet foreign policy with discussion of a matter which was not on the agenda of the Economic Conference. On April 10, 1922, he treated the plenary session of the Conference to a long exposition of the Leninist principles of peaceful coexistence between Russian socialist government and the capitalists surrounding. In addition, he submitted a proposal for a general limitation of armaments and reduction of armed forces of all countries. He proposed finally convening a world peace conference.⁵⁰

The Genoa Conference, which had been a failure in terms of its official purpose, was deemed a success in terms of the Soviet diplomatic game. It was followed by a regional disarmament conference which met in December 1922, in Moscow and included Poland, Finland, Latvia and Estonia in addition to the host country. The conference produced no results, owing to Soviet reluctance to make disarmament a part of an over-all plan for non-aggression guarantees and peaceful settlement procedures, which were, in the minds of the other participants, a *sine qua non* of the disarmament proposals.⁵¹

The same line was followed during the Lausanne Conference, which met almost simultaneously concerning the regime of the Turkish straits. The Soviet delegation to the conference assumed the mantle of the defender of peace, general disarmament, and the rights of small and weaker nations.⁵²

The opportunity for conference table propaganda on a grand scale came during the Disarmament Conference, which, during a crucial period of the

interwar era, occupied the center of the international arena. In the eyes of public opinion, the Soviet contribution to the work of the conference was linked with the person of Maxim Litvinoff and marked a new era in the evolution in Soviet foreign policy, which culminated in the Soviet Union's joining the League of Nations, from which it was later to be expelled because of its attack on Finland. The Soviet Union's participation in the work of the disarmament conference indicated that its position had changed from that of a revisionist power to that of a defender of the status quo. It had modified its attitude of hostility toward the League of Nations, although preserving some of its basic reservations as to the usefulness of this international organization. In an interview with a *New York Times* correspondent on December 25, 1933, Stalin averred that the Soviet attitude to the League of Nations was not fundamentally hostile and that he could see its usefulness in the preservation of peace. He admitted that "the League may act in some measure like a brake, retarding or preventing an armed conflict."⁵³

Even more important, the Soviet Union, which in the beginning focused its attention on the problem of total disarmament or at least reduction of armaments, disregarding—in line with the 1922 Moscow Conference—all other aspects of international security (prevention of aggression and peaceful settlement of international disputes), came out with a comprehensive statement regarding the definition of aggression. It included in its concept of aggression, propaganda that would be incompatible with the right of each nation to "free development according to its own choice and at the rate that suits it best" and with the right to safeguard "the security, independence, and complete territorial inviolability of each state and its right of self-defense against attack or invasion from the outside."⁵⁴

The Soviet participation in the Disarmament Conference started with a proposal submitted in 1927 to the Preparatory Commission for complete and total disarmament. It called for disbandment of all armed land, air, and naval forces; destruction of arms, warships, military airships, fortresses, and armament factories; abolition of military service; suppression of military budgets; suppression of military and naval administrations. Military propaganda and instruction were also to be prohibited.⁵⁵ A year later, while the original proposals were still being discussed, the Soviet delegation put before the assembled diplomats another version of its disarmament proposals.⁵⁶

While pushing for the adoption of drastic disarmament measures, the Soviet Union voiced its fundamental opposition to other aspects of the collective security system—prohibition of aggression and peaceful settlement of international disputes—doubting whether the Soviet state could trust the impartiality of international tribunals or international organizations.⁵⁷

V. THE END OF THE MYTH: EXIT KOMINTERN

The Second World War caused a basic revision in Soviet attitudes, coloring particularly foreign policy and reflecting upon the Soviet concept of world public order. It took some time before the Soviet leadership, still comprising men who made the October 1917 revolution, could adapt Soviet policies to new conditions in the international situation. The Soviet Union was no longer the only socialist state, with great power status potential rather than real and which was neither able to, nor did, aspire to the role of the leader in a community of nations consisting exclusively of capitalist countries. Instead, the Soviet Union was one of the few great powers which emerged from the war, having borne the brunt of the war in Europe. Its dominant position in Asia and eastern Europe extended its influence over its smaller neighbors, laying foundations for the future commonwealth of socialist nations.

Soviet great power status was won not in the course of a world revolution, but by the victory in the war in alliance with the great western democracies. The new status was expressed in two forms. First, the Soviet Union, together with four other great powers, assumed responsibility for the liquidation of the after effects of the war. Second, the Soviet Union became one of the permanent members of the United Nations Security Council, which accordingly to the original design was to be the center of political decisions on the issues of war and peace. For the first time in its history, the Soviet Union was no longer isolated and was able to guard its interests effectively against the entire capitalist world.

The process of adjustment from the position of virtual isolation to great-power status, including a seat in the great-power directorate of the world, began with the dismantling of the Komintern. This fact more than anything else suggests that the Soviet approach to problems of foreign policy was no longer a matter of ideology but a matter of great-power status. Stalin, commenting on the meaning of the dissolution of the Komintern in May 1943, explained that the dissolution exploded the Hitlerite propaganda that "Moscow" intends to interfere in the internal affairs of other countries and to Bolshevize them and that Communist parties in other countries are subject to orders from abroad. The dissolution of the Komintern, he further pointed out, made it possible for the members of the Communist parties to cooperate with other progressive and patriotic movements of their countries for the struggle against Fascism and for national liberation. Finally, the dissolution of the Komintern, in the words of Stalin,

"made possible the work of the patriots of all countries for the unification of all peace-loving nations into a single international camp for the struggle with the threat of world domination of Hitlerism, clearing the way for the organization in the future of the international commonwealth of nations on the basis of their equality."⁵⁹

Since the dissolution of the Komintern, the Soviet Union never again resorted to the services of a theoretically independent propaganda agency of

this type. The Cominform, created in 1947 and dissolved in 1955, had no connections with foreign Communist parties and played no rôle in propaganda actions outside the Soviet bloc.

The second revision of the basic Soviet tenets about the technique of international relations in a world consisting of socialist and capitalist states concerned the doctrine of the inevitability of wars. Early in the postwar period, Stalin was rather pessimistic regarding the chances of permanent peace in the community of nations as it then existed. In his electoral speech of February 9, 1946, he maintained that:

"The Second World War demonstrated positively the possibility of peaceful collaboration between world powers, even in the following period. However, the Yalta and Potsdam agreements were violated by the other powers, and foreign policy of the capitalist states remained fundamentally unchanged. Consequently, as capitalist countries constitute the majority, it is impossible to achieve peaceful change in international relations. Wars shall still be the main method of adjusting the control of the world markets and sources of raw materials, bringing about a shift in the balance of power."⁶⁰

At the same time, even during Stalin's reign, it was claimed that, on the whole, the security of the Soviet Union is practically assured, owing to its strength and the growth of the progressive tendencies in the world.⁶¹ After the death of Stalin, *Pravda* wrote concerning the dissolution of the Cominform in 1955, that the Cominform had been established because the "reactionary circles of the Western Powers broke their wartime policy of cooperation with the USSR and declared the cold war . . . As a result, the danger of a new war became acute . . . However, in recent years there have been changes in the international situation. The extension of socialism beyond the boundaries of a single country and its transformation into a world system; the formation of a vast "peace zone" including both the socialist and non-socialist peace-loving countries of Europe and Asia; the growth and consolidation of many Communist parties in capitalist, dependent countries; . . . reduced the danger of war."⁶²

The communique on the dissolution of the Cominform reads as follows:

"For the first time in history there has arisen the possibility of preventing new wars and imperialist aggression through the united effort of the peace-loving nations and peoples . . . New prospects have also opened up for the transition of various countries to socialism including the possibility of using parliaments for transforming the capitalist societies of certain nations into socialist ones."⁶³

In other words, the world situation and the balance of power seemed to rule out important changes in the political ideological morphology of the world by means of great wars, and in this sense the Soviet Union assumed a policy of defending the status quo. Changes, if any, would come through the transition of the colonial peoples to independent statehood, through the economic expansion of the socialist nations, and through a long-range shift

in the balance of power from the old industrial societies, the traditional members of the international community, to new centers of power, civilization, and culture, which will hopefully align themselves with the socialist system.

This shifting of ideological positions was significantly aided by the three successive failures of schemes designed to effect forcefully a change in the balance of power. The attempts to isolate and push the Western Powers out of Berlin, the Korean War, and the missile crisis in Cuba demonstrated that this type of action would invariably end in failure and that the balance of forces is too stable to reward international adventurism of any kind.

VI. PEACEFUL COEXISTENCE AND WARS OF NATIONAL LIBERATION

In the situation where major conflagration and the use of force between the two pretenders to world leadership is excluded, the Soviet leadership responded with two doctrines which conform to the conditions of international life at the present: "peaceful coexistence" and "wars of national liberation."

The Soviet theory of international relations is based upon the Clausewitzian model of politics: Peace is the pursuit of policy by nonmilitary means. Stalin, characterizing the international position of the Soviet state after the period of foreign intervention, stated that "the period of open war was replaced by a period of peaceful struggle."⁶⁴ Indeed, coexistence is also struggle, and, as Chicherin pointed out in his note to the German government in September of 1918, the Soviet regime's *raison d'être* is bound up with anticapitalist propaganda.⁶⁵

In terms of the present study, which aims to analyze Soviet propaganda as a technique of international relations within the framework of world public order of the present time, the basic Soviet thesis is that anticapitalist (or anti-imperialist) propaganda is permissible under international law and is fully compatible with international cooperation. Indeed, it is the very essence of the rule of law. The 1951 edition of *International Law* stated that:

"Norms of international law and its institutions serve in the hands of the truly democratic countries and governments as a weapon for the strengthening of democratic principles of legality in international relations, and in the hands of the antidemocratic and reactionary governments to deceive the peoples, as a means of camouflaging their imperialistic plans of expansion and aggression . . . Economics and policy, philosophy and law represent at the present time an area of struggle of the two camps . . . International law also represents such an area."⁶⁶

Since the doctrine of the inevitability of war was declared no longer valid, propaganda, the vehicle of the ideological (peaceful) struggle, became the chief technique of the peaceful struggle between the two worlds of socialism and capitalism. Khrushchev made the ideological struggle an indispensable

condition of peaceful relations of socialist countries with capitalist nations:

"Messrs. capitalists accuse us of simultaneously proclaiming the policy of peaceful coexistence and talking about the struggle between the communist and bourgeois ideologies. Yes, this struggle goes on because it expresses the interests of different classes. This is fully legitimate. Capitalists . . . defend by all means the private ownership of the means of production . . . We communists . . . are opposed to private ownership of the means of production . . . But the capitalist and socialist countries are situated on the same planet; they cannot depart anywhere from this planet. This means we must coexist . . . Our ideas will conquer mankind."⁶⁷

As an important Soviet theoretician put it:

"Peaceful coexistence is not a conflictless life. As long as different socio-political systems continue to exist, the antagonisms between them are unavoidable. Peaceful coexistence is a struggle-political, economic, and ideological . . . Coexistence means that one does not fight the other, does not attempt to solve international disputes by arms, but that one competes through peaceful work and cultural activities. But we would cease to be Marxist-Leninists if we forgot the elementary laws of social life, the laws of class struggle."⁶⁸

Thus, peaceful coexistence and ideological struggle represent, in the Soviet view, inherent and inseparable elements of international relations between socialist and capitalist countries. In the letter to the *Revue Generale de Droit International Public* (Paris), eight Soviet professors of international law, including the late Eugene Korovin, stated that:

"The programme of the Communist Party attributes a big place to the definition of Peaceful Coexistence and of its different aspects as one of the forms of the class struggle in the international arena—political, economic, and cultural struggle—which accomplishes itself with exclusively peaceful methods."⁶⁹

And finally, the new program of the Communist Party of 1961 defined peaceful coexistence as a "peaceful competition between socialism and capitalism on an international scale" and as a "specific form of class struggle."

VII. PROPAGANDA WITHIN LIMITS OF LAW

When Chicherin wrote his note on anti-German propaganda in September 1918, he claimed that the Soviet government would betray its nature if it desisted from that form of struggle: it may be contrary to international law, or normal rules of diplomacy, but is justified by the law of life. Now, with the doctrine of peaceful coexistence, which the Soviet government claims constitutes the basic principle of international law—in the same manner as for instance the principle *pacta sunt servanda*—ideological struggle and propaganda are legally permitted, and no capitalist state has a claim to

demand that a socialist government desist from the propaganda which conforms to the rules of peaceful coexistence. This, however, raises another question namely what propaganda is permissible propaganda? The answer is that propaganda is permissible when it furthers the aims of the principle of peaceful coexistence. In terms of another definition, the propaganda of Soviet foreign policy, a policy of peace, is permissible.

It is claimed that peace has always been the cardinal objective of Soviet policies since the inception of the Soviet regime. The Revolution in Russia was linked to the slogan of the struggle for peace. The Soviet government's struggle for its recognition, for the recognition of the social and economic order of the Soviet policy, and for economic assistance, was linked with the quest for peace. While the direct motivation of this line of policy and propaganda was that peace was needed in order to build socialism and, at present, communism in the Soviet Union, it is also maintained that war, as a means of policy, is incompatible with socialism. The official doctrine is that once human societies of the world shall adopt the socialist form of economy and the Soviet form of government, wars will disappear from international relations and the era of permanent peace shall come. With little concern for historical accuracy, the English version of the USSR Academy of Sciences treatise on international law asserts:

"Thanks to the consistent struggle of the democratic forces, above all the socialist countries, the generally recognized principles of International Law have been affirmed in a number of international legal documents. In its Preamble the U.N. Charter, for example, states that member countries undertake to practice tolerance and live together in peace with one another as good neighbors," and to unite their "strength to maintain international peace and security."⁷⁰

Soviet scholars point out that the Soviet struggle for peace has initiated mass movements for peace in western Europe, leading to peace congresses in Paris, Prague, and Stockholm.⁷¹

Total support of peace must be understood dialectically, i.e., not excluding the use of arms and force in promoting the spread of socialism, emancipation of colonial peoples, and liquidation of empires. The propaganda of peace is thus compatible with support for "wars of national liberation."

The Soviet support for insurgency in colonial empires had little justification in the actual content of rules of international law. In the beginning, the Soviet regime acknowledged its adherence to the doctrine of national self-determination. In this sense, the principle of self-determination was considered identical with the right to national independence, which in Soviet policy was equated with membership in the Soviet Union, whatever the form Soviet constitutionalism assigned to the member nationality or people: union republic, autonomous republic, autonomous province, or national district. Thus, while theoretically radical, the Soviet doctrine of self-determination was far from revolutionary.

Since the Charter of the United Nations was adopted, the principle of

self-determination was declared to be a fundamental policy for the international community. However, this provision of the Charter has hardly made a change in the fundamental rules of international law, as the Charter has not made every people or nationality, whether colonial or not, eligible to be a member of the United Nations, its membership being open to states only.

On December 14, 1960, the United Nations General Assembly adopted the resolution on "Granting Independence to Colonial Countries and Peoples." This resolution had its origin in the speech of Khrushchev who, on September 23, 1960, proposed a "complete and final liberation of peoples languishing in colonial bondage."⁷² After some discussion, a modified version of the Soviet proposal was adopted, which provided that:

"Immediate steps shall be taken, in Trust and non-self-governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desires, without any distinction as to race, creed or color, in order to enable them to enjoy complete independence and freedom."⁷³

Quite apart from the legal significance of the declaration, which has restated in solemn terms the policy which, as regards its main objective, has been practiced for quite some time and certainly at a greatly accelerated pace since World War II, it seems rather dubious whether it may be interpreted to legalize Soviet propaganda of insurgency. The declaration clearly prohibited the use of propaganda for subversion by stating further that:

"All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, noninterference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity."⁷⁴

This is not the position of the Soviet government or of the Soviet scholars. Their thesis is that support for wars of national liberation is action in the name of the international community, as the right of each national group to an independent state is expressly recognized by modern international law, including the Charter of the United Nations. A state supporting a liberation movement acts in the name of the international community and in accordance with the rules of international law. As one of the Soviet international law experts put it:

"Wars of national liberation can be equated with one of the forms of international sanctions, the application of which on the basis of the United Nations Organization Charter is being demanded ever more insistently by the peoples towards colonial powers persisting in their illegal policy of barring self-determination of dependent peoples."⁷⁵

VIII. FREEDOM OF INFORMATION AND SUPPRESSION OF FASCIST WARMONGERING

On December 14, 1946, the General Assembly of the United Nations resolved to authorize the holding of a conference of all members on freedom of information, and instructed the Economic and Social Council to undertake the convocation of such a conference. The purpose of the conference was "to formulate . . . views concerning the rights, obligations and practices which should be included in the concept of freedom of information."⁷⁶ The matter was dealt with subsequently by EcoSoc, and the date of the conference was set.⁷⁷

While the General Assembly and then EcoSoc were dealing with this issue, Soviet conduct in Eastern Europe caused a good deal of anxiety in the West, with the result that, on one hand, Soviet motives and foreign policy aims were being questioned, while on the other, serious doubts were felt as to the future of the United Nations, whose effectiveness in foreign affairs depended upon concerted action of the great powers. The world press was further upset by the fact that the Soviet Union, never a partisan of free information, subjected foreign correspondents to restrictions and controls which were highly reminiscent of the press regimes in totalitarian countries. In this situation, a discussion of the need for free exchange of information in order to safeguard peace by the control of public opinion was contrary to basic Soviet policies. At the same time, the rising tide of alarm in the world over Soviet actions in Eastern Europe and in divided Germany called for some kind of Soviet counteraction in order to reduce the impact of these developments upon public opinion of the free communities.

The Soviet position in principle was expressed in the draft resolution submitted by the Soviet delegate to the Third Committee of the United Nations on August 3, 1947. The draft resolution asked that the agenda of the conference be reconsidered with the purpose of defining the freedom of the press with a view to eradication of Fascist ideologies and the exposure of warmongers. Furthermore, freedom of information would be assured only if the broad masses had at their disposal the material resources to establish press organs, to prevent the bribery of privately owned press organs, and the establishment of proper measures to institute censorship of privately owned press organs.⁷⁸

The Soviet proposals would have provided full freedom for the Soviet press and subjected the press in the free-economy countries to censorship and other control measures. In the discussion of the draft of the resolution, the Soviet delegate declared that in the free-economy countries freedom of the press means the freedom of the reactionary Fascist circles to impose their views on the majority of the people, as only these circles controlled the means to publish papers and magazines. In the free-economy countries the press represents the views of its owners. The world, the Soviet delegate

continued, was interested in the information favoring international cooperation, and, therefore, only social ownership of the means of information would assure the right kind of information. As this was not possible in the free-economy countries, strict control of the press and criminal liability for distortion of information and warmongering ought to be established there. The future conference ought to determine the propaganda content and deny it to the Fascist circles.⁷⁹ While unable to accept the Soviet point of view, which would in effect rule out the freedom of the press and unhindered flow of information, the General Assembly adopted on November 8, 1947, a resolution which, on the one hand confirmed the duty of all members of the United Nations to uphold fundamental freedoms, including freedom of expression, and at the same time condemned "all forms of propaganda in whatsoever country conducted, which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace or act of aggression."⁸⁰

In connection with the discussion in the General Assembly of the Draft of the Convention on the Freedom of Information, the Soviet delegate charged that the draft was totally unsatisfactory and that the Soviet Union would vote against it. The draft prescribed only how the press and other media should be used to provide efficient service for the owners of newspapers and the large publishing houses, but the question of combating the slanderous information about several states including the Soviet Union was never raised. The Soviet delegate, Gromyko, further charged that the Western Powers daily spread false information about the peoples' democracies. Newspaper monopolies were seeking entry into other countries in order to spread slanderous information, to whip up war hysteria, and to arouse hatred. Newspaper correspondents were being employed to gather defense information and information on industry, agriculture, and science. The Soviet Union, Gromyko continued, resorted to censorship in order to combat the slander of Russia by foreign correspondents. Soviet censorship was not directed against freedom of information but aims to prevent the spreading of distorted information.⁸¹

On various occasions the Soviet government charged governments of other countries with hostile propaganda and warmongering. On September 18, 1947, the Soviet representative in the United Nations General Assembly charged the United States government with fomenting war psychosis and propaganda favoring a new war against the Soviet Union. All means of propaganda were used in order to justify an arms race and increased production of atomic weapons. Behind all these activities, the Soviet delegate asserted, were influential circles in America (American monopolies) seeking realization of their expansionist plans. As the Soviet representative explained, large press organs, owned or controlled by American capitalists, were waging war propaganda. Also, various scientific institutions and universities in the United States were guilty of spreading such propaganda. The Soviet delegate asked that a resolution be passed condemning propaganda in a number of

countries, including the United States, Britain, Turkey, and Greece, and recommending that such propaganda be prohibited by means of internal legislation, proper censorship, and disarmament.⁸²

On several occasions the Soviet Union has alleged that certain publications which appeared in various countries violated the November 1947 resolution of the General Assembly. A Soviet note addressed to the United States government charged that an article appearing in the May 17, 1948, issue of *Newsweek*, discussing the role of the American military bases abroad, was contrary to the resolution concerning warmongering, and lodged a formal protest with the United States government.⁸³ A similar protest was lodged with the government of Holland on the same date.⁸⁴

In 1951 the Soviet Union passed the Peace Defense Act of March 12, 1951, which declared that, "guided by the lofty principles of Soviet policy of peace," recognizing "that the conscience and the sense of justice of the peoples, who in the lifetime of one generation have gone through the calamities of two world wars, cannot tolerate the impunity with which war propaganda is being conducted by aggressive circles of certain states," and joining hands "with the appeal of the Second World Peace Congress, which expressed the will of the whole of progressive mankind to prohibit and condemn criminal war propaganda," the Supreme Soviet of the USSR resolved to adopt the following law: "1. That war propaganda, in whatever form conducted, undermines the cause of peace, creates the danger of a new war, and is therefore a grave crime against humanity; 2. That persons guilty of war propaganda shall be committed for trial as major criminals."⁸⁵

As a criminal law provision, the Peace Defense Act leaves a number of questions unanswered. Does it provide punishment for crimes against peace committed on Soviet territory only, or also for those committed abroad? What constitutes an act of propaganda? Does it provide punishment for Soviet citizens only, or also aliens? Does it punish only warmongering against the Soviet Union, or also against third states?

In the international forum the question of the legality of Soviet propaganda is an open issue. At the present time, the Soviet Union has declared itself against the old and established practice that prohibits hostile propaganda against other countries with which it maintains normal diplomatic relations. The issue of propaganda belongs to that great mass of law and policy which divides the free world from the socialist countries. There is little doubt that freedom of the press and the free flow of information across national frontiers represents an important technique for the relaxation of tensions and for the buildup of trust and confidence between nations. This freedom would have to be exercised in the name of general weal irrespective of the national interests of individual countries. It is possible to achieve this aim with the press privately owned in the free societies and with social ownership in the socialist countries. Neither free societies nor the socialist countries are prepared to acknowledge the hazards to peace inherent in both systems of press and publishing ownership. And yet, in more recent

times an attempt has been made to cross the battle lines drawn in the ideological conflict in the propaganda area.

In the spring of 1962 when the Eighteen Nation Disarmament Conference convened in Geneva, the Soviet delegation insisted that the work of the conference had to begin with a ban on war propaganda. For the first time since the issue of the freedom of the press was raised, a possibility of a compromise was present, and on May 25, 1962, the conference adopted a resolution which provided that measures of censorship to prevent war propaganda were necessary. The resolution recommended that states "adopt, within the limits of their political systems, appropriate practical measures, including measures in a legislative form, in the case of states which consider such form appropriate, with a view to giving effect to this declaration against war propaganda." Both the United States and the Soviet Union voted with all other delegations to adopt the resolution. However, a few days later the Soviet delegate was instructed to withdraw the Soviet acceptance.⁸⁶

The Soviet postulates addressed to non-Socialist countries are manifestly unilateral demands, and clearly lack the character of rules of law. Their unilateral character is explained by the fact that warmongering and Fascist propaganda cannot be committed by the Soviet government.

At the same time, Soviet leaders are convinced that ideological struggle, propaganda in the true sense, is a necessity in present historical conditions, if international society is to develop towards higher forms of social organization. The pattern of peaceful coexistence calls for both absence of war and of armed struggle, and for competition in an ideological struggle. The legality of that pattern is the same as that of peaceful coexistence. History, which brought about a nuclear stalemate, also called for ideological struggle and competition.

NOTES

¹ Cf. Draft Code of Offenses against Peace and Security of Mankind adopted by the International Law Commission in 1951, U.N. Doc. A/1858; a/CN.4/48 Chap. IV. 45 *AJIL* (1951) suppl. 123.

² Trotsky, *Moia Zhyzn* 65 (1930).

³ 16 Lenin, *Soch.* 149 (1924).

⁴ *SU RSFSR* (1917) no. 1.

⁵ *Izvestia*, Nov. 3, 1917.

⁶ *Id.*, Nov. 10, 1917.

⁷ *Ibid.*

⁸ *SU RSFSR* (1917) no. 6.

⁹ As Lenin explained,

"We Marxists do not belong to the absolute opponents of any kind of war . . . Our aim is to bring about a socialist community, which, by abolishing the division of mankind into classes and by bringing to an end any exploitation of man by man and of one nation by another, will unavoidably preclude any possibility of wars in general. But in the war for achieving such socialist community we are bound to find conditions in which the class struggle within a single nation may come into collision with a war between different nations . . . Therefore, we cannot deny the possibility of revolutionary wars . . .

which . . . have a direct bearing upon revolutions . . .” 30 Lenin, *Soch*, note 2, at 332-33.

¹⁰ Appeal of the Council of People's Commissars to the Army and Navy of November 9 (22), 1917.

¹¹ *SU RSFSR* (1917) no. 6.

¹² *Izvestia*, Dec. 9, 1917.

¹³ *Id.*, Dec. 17, 1917.

¹⁴ *Dokumenty Proletarskoi Solidarnosti* (1962) 15.

¹⁵ See Notes 21 and 23-24 *infra*.

¹⁶ *Ibid.*

¹⁷ *Dok.* 1598, 601, 602, 605, 609, 611 (1957). Cf. Chicherin's Note of Nov. 14, 1918, *id.* at 567.

¹⁸ *Id.* at 135, 208, 268, (1958).

¹⁹ “The Soviet Union,” Khrushchev said, “supports the idea of setting up a rocket and atom free zone in the Scandinavian peninsula and the Baltic area . . . It would be beneficial to the Peoples of all Scandinavian countries if Scandinavia were to become an atom free zone in which there would be no military bases of other countries . . . I hope I shall be understood properly in Norway and Denmark if I say that these countries have landed in the Atlantic Bloc through a misunderstanding . . .” *Pravda*, June 16, 1959.

²⁰ *Id.*, May 31, 1952.

²¹ *Izvestia*, Nov. 23, 1917.

²² Khrushchev, *Za Mir, Za Razoruzhenie, Za Svobodu Narodov* (1960) 288.

²³ *Dok.* I, 113.

²⁴ *Id.* at 119.

²⁵ 2 *id.* at 337.

²⁶ 3 *id.* at 17-18 (1959).

²⁷ Treaty of Peace with Estonia, Feb. 2, 1920, *Dok.* 2, 339; Treaty of Peace with Lithuania, July 12, 1920, *id.* 3 at 28; Treaty of Peace with Latvia, Aug. 11, 1920 *id.* 3, at 101.

²⁸ *Dok.* 3, 248.

²⁹ *Id.* at 623.

³⁰ *Id.* at 608.

³¹ *Id.* 4 at 596 (1960).

³² *Id.* 7 at 623 (1963).

³³ *Id.* at 516.

³⁴ 28 *AJIL* Supp. 3-4 (1934).

³⁵ *Dok.* 1, 488.

³⁶ There seems to be little doubt as to the fact that the Soviet mission in Berlin was engaged in espionage and subversive propaganda. As to the events of November 4-5, see 1 *id.*, at 560 ff. Taracuzio, *War and Peace in Soviet Diplomacy* (1940) 75-76.

³⁷ *Dok.* 7, 369-70.

³⁸ *Id.* 4, at 374-80.

³⁹ *Id.* 7, at 55, 210-11, 469.

⁴⁰ *Id.* at 330, 334.

⁴¹ *Id.* at 559.

⁴² Toynbee, *Survey of International Affairs* (1929) at 256-278.

⁴³ *Dok.* 7, 449.

⁴⁴ Toynbee, note 41 at 288-92.

⁴⁵ *Id.* at 382.

⁴⁶ See Instructions of the People's Commissar for Foreign Affairs for the representative plenipotentiary of the R.S.F.S.R. in Afghanistan (June 3, 1921), in *Dok.* 4, 165, and his telegram to the representative plenipotentiary in Persia (Oct. 5, 1921), 7, *id.* at 394. It appears, however, that the Commissar's authority even over the foreign service personnel was not always supreme and that interests of diplomacy were at times at odds with political or revolutionary action.

⁴⁷ Decision of the Presidium of the Central Executive Committee of the U.S.S.R. of Nov. 21, 1924, *Dok.* 7, 551.

⁴⁸ Whitton & Larson, *Propaganda: Towards Disarmament in the War of Words* (1964) 28.

⁴⁹ *Dok.* 1, 58-59.

⁵⁰ Materialy Genuezkoi Konferentsii 89-92 (1922); Georgii V. Chicherin, *Statii I Rechi Po Voprosam Mezhdunarodnoi Politiki* (1962) 208-12.

⁵¹ *Dok.* 6, (1962) 39.

⁵² See the Declaration of the Russian delegation at the first session of the Straits Commission of the Conference of Lausanne, *id.* at 35-38.

⁵³ *N.Y.T.*, Dec. 28, 1933, p. I, col. I; 13 Stalin, *Soch.* (1951) 280.

⁵⁴ Conference for the Reduction and Limitation of Armaments, Minutes of the General Comm'n, 14 Dec. 1932 to 29 June 1933, at 237 (League of Nations Pub. No. 1933 IX 10).

⁵⁵ Preparatory Comm'n for the Disarmament Conference, Minutes 30 Nov. to 3 Dec. 1927, at 10 (League of Nations Pub. No. 192 IX 2).

⁵⁶ *Ibid.*

⁵⁷ Conference for the Reduction and Limitation of Armaments, *op. cit. supra* note 54, at 236. See Chapter VIII Disputes.

⁵⁹ *VPSS* 1 (1946).

⁶⁰ *VPSS* (1946) 104-5 (1952) 28.

⁶¹ See, for instance, the Declaration of the Nine Parties of September 1947, *Pravda*, Nov. 10, 1947.

⁶² *Pravda*, April 18, 1955; *Izvestia*, April 18, 1955.

⁶³ *Ibid.* The Soviet position was also dictated by the nuclear stalemate. See Khrushchev's speech reported in *Pravda*, *Izvestia*, Jan. 1, 1960.

⁶⁴ 5 Stalin, note 52 at 117.

⁶⁵ See text accompanying note 35.

⁶⁶ *Mezhdunarodnoe Pravo* 3-4 (1951).

⁶⁷ *Pravda*, April 16, 1957.

⁶⁸ *Id.*, Feb. 13, 1957.

⁶⁹ Reprinted in Edward McWhinney, "Peaceful Coexistence" and Soviet-Western International Law 128 (1964). For a general treatment of the doctrine of peaceful coexistence see Wladyslaw W. Kulski, "Peaceful Co-existence" (1959). Legal aspects were discussed by B. Ramundo, "The Socialist Theory of International Law" 25-30 (1964); Lapenna, *The Legal Aspects and Political Significance of the Soviet Concept of Co-existence*, 12 Int'l & Comp. L.Q. (4th ser.) 737 (1963). For the Soviet point of view see Georgii P. Zadorozhnyi, *Mirnoe Sosushchestvovanie I Mezhdunarodnoe Pravo* (1964); Khrushchev, *On Peaceful Co-existence*, 38 Foreign Affairs I (1959); Tunkin, *Printsip mirnogo sosushchestvovania* (1963) SGP no. 7, p. 26, 26-27.

⁷⁰ Academy of Sciences of the U.S.S.R., International Law 17 (n.d.) See also Korovin, *K voprosu o roli narodnykh mass v razvitii mezhdunarodnogo prava* SGP (1956), no. 3, p. 50.

⁷¹ *Ibid.*

⁷² 1960 *U.N. Yearbook* 44-50.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Tuzmukhamedov, *Mirnoe sosushchestvovanie i natsionalnoosvoboditelnaia voina* SGP (1963) no. 3, p. 87, 91.

⁷⁶ 1947-48 *U.N. Yearbook* 102.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Izvestia*, Aug. 5, 1947; II *VPSS* (1947) 358.

⁸⁰ 1947-48 *U.N. Yearbook* 88-93.

⁸¹ *Pravda*, *Izvestia*, May 18, 1949.

⁸² 1947-48 *U.N. Yearbook* 88-89.

⁸³ *Izvestia*, June 10, 1948.

⁸⁴ *Ibid.*

⁸⁵ *AJIL* Supp. (1951) 34.

⁸⁶ *NYT* May 26, 1962.

Chapter X

INTERNATIONAL LAW AND THE SOVIET UNION

In the preceding chapters the actions of the Soviet government were examined in order to give meaning to rules and institutions of international law as they were used to legitimate Soviet conduct in international relations. It is now appropriate to consider the Soviet system of international law in its role in the international community.

Soviet scholars frequently assert that Soviet international law and foreign policy are merely an extension of domestic policy and Soviet internal legal order. While this statement must be treated with reservation it still deserves attention as it reflects the basic feature of Soviet internal order. Soviet polity is a monolithic structure and social and economic programs are inspired by the same principle. The state and its agencies are its main instruments. Indeed from that point of view the function of Soviet International Law is directly related to internal Soviet legal institutions.

I. SOVIET CLAIMS

It is taken as axiomatic by the proponents of the Soviet doctrines of international law that the present structure of the international community was a result of the October Revolution, and the subsequent formation of the Soviet state.

The Soviet state and law rest on two principles which allegedly transformed human relations both internally and internationally. The Soviet state abolished private property, and the exploitation of man by man. The abolition of private property permitted the fullest self-determination of peoples and ethnic groups, either as independent states, or in association with each other. An example of such an association is the Soviet Union, which it is claimed, is the union of free nations, each fully sovereign in the sense that it not only controls its political destinies, but also its natural resources.

It is further alleged that the appearance of the Soviet Union affected relations between nations by creating a new political and legal framework for the coexistence of states within the international community. In particular the system of international law was modernized by the innovations resulting from Soviet policies. Soviet Union richly endowed, developed under socialism into a great economic power. It had been able not only to resist aggres-

sion, but also to be a victor in every war and crisis, thus establishing in the Soviet state a base for the transition of the world community to socialism and communism. The first stage of the historical movement towards higher forms of social organization both internally, as well as internationally, was the establishment of a socialist state system. This system is governed by the law, which though a part of general international law, nevertheless considered to be a system of rules superior to that prevailing in the world at large is the future international law of the entire community.

II. THE GRADUAL BUILDUP OF THE SOVIET RECOGNIZED INTERNATIONAL LAW

Soviet scholars have frequently considered the question whether Soviet Union was bound by the rules of the general international law. In practice, however, there was never any doubt that the Soviet Union claimed rights under international law vis a vis other members of the world community. Indeed, the RSFSR and the later Soviet Union claimed rights of succession as to the international status of the Russian empire, which it replaced. It rejected certain obligations accepted by Russia with regard to other states (loans and debts), and declared itself free to disregard the rights of foreign nationals and legal entities in connection with the abolition of the private property system. It also rejected and denounced certain political agreements concluded with other powers, allegedly incompatible with the new regime. The new regime declared that it would also abandon traditional policies of tzardom, and denounced unequal treaties, particularly those imposed on oriental nations such as China, Afghanistan and Persia. The Soviet Union, however, has never denied the validity of international law in its entirety.

As the Soviet Union's relations with the outside world expanded, the scope of rules of international law governing these relations expanded as well. Law of diplomatic and consular relations, law of treaties, law of international trade, rights accruing to the Soviet Union under the law of the sea, etc., were recognized as valid for the Soviet Union. The Soviet opposition was demonstrated almost exclusively with regard to the new institutions of international law which were the result of the new regime of Europe, established under the aegis of the League of Nations.

Soviet opposition to the regime in Europe under the League of Nations and its institutions was due to the conviction that the League and its institutions, including the mandates, was merely a device invented by the imperialist nations to perpetuate and stabilize the balance of power which resulted from the war.

Soviet innovations in international law at that time were very limited. The Soviet Union introduced changes in its diplomatic ranks. The changes, however, were not practical and were later replaced by the system established by the Congress of Vienna with some modifications. The other change in the

Soviet foreign service was a logical consequence of the nationalization of the means of production and of government monopoly of foreign trade. Two separate ministries in charge of foreign affairs and of foreign trade of the Soviet Union were established. Two branches of foreign service were created and were each subordinated to its central agency. Foreign trade missions which assumed the responsibility for handling foreign trade transactions of the Soviet Union, however, never became a universally accepted institution of international customary law. The Soviet Union had to negotiate with individual countries for the accreditation of its foreign trade missions.

After World War II, and particularly during the post-Stalin period Soviet scholars and diplomats claimed that Soviet policies had contributed significantly to the emergence of new international law in connection with two aspects of Soviet social reality: the system of property relations and the rights of the ethnic groups to self-government and political expression.

III. THE TECHNICAL CHARACTER OF THE NEW PRINCIPLES

A. *Equality of Property Regimes*

The abolition of private property relations and its replacement by the socialist system of property raised the problem of what would be the legal forms of the interaction between the two systems of property relations in the international context.

In this connection, the Soviet Union advanced a number of propositions. In the first place, the Soviet Union claimed extraterritorial effect for its nationalization decrees. On this basis it claimed that the dissolution of Russian companies in Russia had extraterritorial effect as the *lex patriae* determined the existence and the assignment of the assets of the Russian companies. This proposition had little acceptance either in the immediate post-revolutionary period or after World War II, when the Soviet Union extended its regime into a number of new countries, thereby introducing its system of property relations.

The general reaction of Western courts was that, while there is no question as to the binding force of the Russian nationalization decrees in Russia, they had no extraterritorial force. With a few exceptions regarding the settlement of Soviet claims to the property of Russian companies and corporations by an international agreement, the rejection of the Soviet decrees was universal.

Furthermore, during the post-World War II period, the Soviet Union itself tacitly accepted the principle of nationalization of foreign private property with compensation. In connection with the cession of some parts of the Finnish territory to the Soviet Union, it settled the claims of Canadian

owners of the nickel mines in Finland, which, because of the cession, came under Soviet rule.

The socialist system of property relations, also affected the rights of aliens, whose treatment was regarded as a matter of state responsibility. Thus the Soviet Union placed aliens residing in Russia under the national regime, i.e., on the same footing as Soviet citizens. Aliens are therefore deprived of property rights which they would otherwise enjoy under a free economy system. At the same time, the Soviet Union claims equal rights for Soviet citizens living abroad. This illustrates the Soviet position as regards claims addressed to the members of the free world which in effect demands the best of both worlds. On one hand, the Soviet Union insists on capitalist type of property rights for Soviet citizens and Soviet legal entities abroad. On the other hand, it claims that aliens and foreign legal entities have no property rights in the Soviet Union. The effectiveness of the Soviet position is related to the extent of Soviet power. Indeed, it would not be practical from a policy standpoint to defend the rights of aliens residing in the Soviet Union with reference to standards other than those established by the Soviet domestic order. Furthermore, in the free economy countries, protection of aliens and their rights is normally a matter of local public policy, thus affording automatically, with no regard to the question of reciprocity, a platform for raising the issue of their status.

The other aspect of the legal interaction of the socialist and capitalist property regimes is foreign trade relations. In order to participate in international commerce, the Soviet state had to create a separate system of agencies in charge of foreign trade. The question of the legal status of the Soviet trade agencies to represent Soviet state in litigations connected with foreign trade transactions had to be regulated. Finally, the concept of sovereign immunity from legal process had to be redefined.

After some period of experimentation the Soviet foreign trade mechanism evolved two basic types of agencies or missions in charge of buying and selling in foreign markets. Foreign trade missions represent the economic interest of the Soviet government in a dual capacity. As official missions of the Soviet Union they are a part of the diplomatic missions and are accredited as such. In addition, they are trading agencies making contracts, to organize the export and import of goods to and from the Soviet Union. In the first capacity, trade missions enjoy the diplomatic status and exemptions from local jurisdiction. In the second capacity, trade missions and the Soviet state are subject to the law of the country where the mission is accredited and to the jurisdiction of the local courts. In addition, the Soviet Union is responsible for the obligations assumed in its name by the trade missions in respect to all its property, claims, sums deposited in local banks, etc., in accordance with the laws of the country where the mission is situated.

In order to further facilitate international economic cooperation the Soviet Union organized a certain number of the so-called trading associations, a system of government agencies, which for the purpose of foreign

trade transactions were not a part of the Soviet state, but enjoyed under the Soviet and foreign law, the status of separate legal entities. Their contracts and legal transactions do not engage the financial responsibility of the Soviet state, and they are responsible for their obligations to the extent of the assets assigned to them. They can sue and may be sued both at home and abroad.

The system of rules which control the activities and determine the legal status of Soviet governmental agencies in charge of Soviet foreign trade, has an important bearing upon the Soviet claim to sovereign immunity in connection with the commercial activities of the Soviet Union. Firstly, Soviet trading agencies, other than the trade missions, are by virtue of Soviet law, not a part of the Soviet state, and as such have no claim to immunities and exemptions from the judicial process. Secondly, official Soviet trade missions are deprived of their diplomatic immunities whenever they engage in trade transactions for the Soviet government. The Soviet claim to sovereign immunity is upheld only with regard to Soviet merchant shipping engaged in international commerce. While the recent treaty adopted by the vast majority of states has limited the immunity of government owned ships from judicial process to ships involved in official government activities, excluding international commerce, the Soviet Union signed the treaty with a reservation claiming the full application of the immunity to all ships owned by the Soviet state.

In view of the practice of municipal courts which have for some time rejected the plea of sovereign immunity as regards transactions of commercial nature, this reservation would appear to be of doubtful validity.

Finally, there is the issue of the legal status of contracts made by Soviet legal entities abroad, and those made by aliens or foreign legal entities in the Soviet Union. Western courts experienced little difficulty in dealing with such contracts. Modern societies recognizing private property, are familiar with public corporations and business activity of governmental agencies, so that the activities of Soviet legal entities connected with foreign commerce were treated in accordance with the general rules in force as regards this type of activity. In the Soviet Union, however, the situation was complicated by the rules on the status of aliens.

Aliens are in all respects, also regarding their property rights, under the same laws as Soviet citizens. They may own items of personal property, for their personal use, including a house, but not the land. Ownership of the means of production is denied to aliens in the same measure as to Soviet citizens, because it is a state monopoly. The same applies to legal transactions involving business activity, wholesale contracts, assignment of industrial equipment, ores and other raw materials etc.

And yet, while this system of property relations is a reality within the Soviet Union, it cannot be enforced in trade relations and economic cooperation with other countries. In the beginning the Soviet Union practiced a system which relied upon contracts made abroad, under the rule of the

foreign law, and under the jurisdiction of foreign courts. It was an expensive system, and hampered the growth and expansion of foreign trade, as it required financial guarantees and the opening of large bank accounts in foreign countries. In due course, the Soviet Union established a regime limited to foreign trade transactions, which afforded foreign traders, individuals, and agents of foreign business organizations the right to make contracts, make their deliveries, and litigate their claims in Russia. The overall effect of these exceptions from the general system of property relations in the Soviet Union was a recognition of "equality" of the private property system in Soviet territory.

In the final analysis, the new system of property relations, which in Soviet legal theory entitles the Soviet state to different treatment in international law has failed to affect all those rules, either municipal or international which determine the interaction between the two regimes of property. The Soviet Union needs to trade with other countries, and in order to do that it must conform to the generally accepted rules of international commerce. Indeed in order to trade, the Soviet Union had to permit exceptions in its public order, which excluded individuals and private legal entities from trade in the Soviet Union, and from ownership of the capital goods.

The only exception in this respect is maritime commerce. This may be explained by the fact that Soviet shipping does not, as yet, compete effectively in international maritime commerce. Should the Soviet merchant marine be capable of such competition, it would have to conform to the general standards of business activities prevailing in maritime commerce.

B. Sovereignty and Equality of States: Ethnic Groups in International Law

The new status of the nationalities and ethnic groups in the international community, the second Soviet contribution to the modern international law is in Soviet opinion the immediate result of the abolition of private property relations. The world community of the present day, enlarged by the great number of emancipated nations is governed by new concepts of sovereignty and the equality of states, expressed in a number of legal institutions, which together constitute a code of peaceful coexistence. In legal terms, peaceful coexistence is expressed in the absence of world government, in the prohibition to use force, in the recognition of the nullity of unequal treaties and their prohibition, the pacific settlement of international disputes, preferably by negotiation, and the principle of self-determination. Sovereign equality encapsulates the principles of territorial integrity, of nonintervention and non-interference in the internal affairs of states members of the international community. The duty of noninterference, moreover, extends to all states and international organizations.

The first question here is: Do these principles apply exclusively to the world community involving socialist and capitalist states only, or do they

also apply to relations between the socialist countries themselves. The first part of the question must be answered in the affirmative. Capitalist states are under strict prohibition to use force, intervene into internal affairs, use force, or threat of force, or to violate the territorial integrity of other states. Socialist states are in this respect under the military protection of the Soviet Union.

At the same time, the Soviet intervention in Hungary and Poland in 1956, and armed intervention of the Warsaw Pact Powers under Soviet leadership in Czechoslovakia in 1968 in an effort to halt the liberalization of the Czechoslovak regime, seem to indicate that sovereignty and equality of states within the socialist system are of different quality as compared to general international law standards.

Not only may military pressure including the occupation of the entire country be used in order to coerce a socialist country to accept the dictates of the Soviet government, but physical coercion may be used against the members of the governments of these countries.

The arrest and trial of the Polish Underground Government invited to Moscow to negotiate the composition of the interim regime for Poland at the end of World War II, the arrest and execution of Hungarian leaders in 1956, the threat of force against Poland at the same time, and the arrest and deportation of Alexander Dubcek, the first secretary of the Communist Party of Czechoslovakia, in 1968 are clear examples of personal coercion against representatives of sovereign and allied nations. Sixteen members of the Polish government during the negotiations were lodged in Lubianka prison. The Czechoslovakian delegation to negotiate the agreement with the Soviet Union following the invasion of Czechoslovakia in August 1968 consisted of two parts. President Svoboda and his associates who flew from Prague to Moscow were accorded official status of state representatives and were treated accordingly. Dubcek and his associates, deported by force from Czechoslovakia, were brought to the conference table under guard and removed from it to their place of detention.

The Soviet inspired concepts of sovereignty and equality have found expression in a number of doctrines which changed the functioning of the institutions of international law. Three of them seem to be of key importance: (1) the doctrine of unequal treaties; (2) function and role of the international organization and its competence as regards individual states; (3) the role of judicial and quasi-judicial settlement (arbitration) of international disputes in modern society.

The doctrine of unequal treaties seeks to give full expression to the principle of sovereign equality of states. Unequal treaties, according to this doctrine, were the prime method used by the imperialist states to reduce weaker nations to colonial status. In the new era colonial nations have the right to denounce the unequal treaties with colonial powers. Not only have they this right at the moment of their emancipation, but they retain it as to treaties subsequently concluded, if treaties concluded with stronger powers,

particularly with former metropolitan countries, still maintain a relation of *de facto* dependence. The Soviet Union by definition is incapable of concluding unequal treaties.

As the primary fact of the new international community is greater equality and national sovereignty, states are the only social facts which have relevance to its functioning. International organizations are simply techniques for the collective management of the affairs of individual states. As such they have no rights other than those of the states, and therefore are under the same prohibition not to interfere in the international affairs of their members as are individual states. Legally, the situation remains the same even when a state is a party to a treaty dealing with a matter usually within its domestic jurisdiction. In other words, international organizations are not a nucleus of future supranational government.

- ✓ Lastly, the Soviet doctrine of international law plays down resort to arbitration and judicial process as a method of settling international disputes. The enhanced sovereign equality in international relations also calls for the use of techniques for dispute settling which stress direct negotiations rather
- ✓ than settlement by a third party.

It is easy to see that the political function of the Soviet doctrines of unequal treaties, the role of the international organizations, and of arbitration and the international judicial process in dispute settling are unilateral precepts addressed to other states in order to provoke reaction that would correspond, in a given situation, to Soviet interests. Their political function is to insulate the Soviet dominated socialist system from outside interference, and to influence relations between the leading powers of the West and other members of the international community should their interests be in conflict. Soviet rejection of international agencies as instruments of order, and of arbitration and international judicial processes, limits the application of the generally accepted standards of international behavior which are independent of power, and whose function it is to equalize the disparity of power, between the members of the international community.

The structure of the world community in Soviet opinion is far from uniform as regards its rules and its institutions. The unifying principle which binds various parts of the international community together is to be found in the role of world powers guardians of peace provided they act in unison. In effect the Soviet Union is not opposed to the centralized control of international relations within the international community, provided that special interests of the Soviet Union within the Socialist Commonwealth and outside the Commonwealth are not interfered with.

That, however, is not the rule of law.

IV. HISTORICAL SIGNIFICANCE OF THE OCTOBER REVOLUTION

In the preceding paragraphs the structure and the political function of the alleged Soviet contributions to the system of international law have been examined. It is now possible to turn to the other aspect of the Soviet impact upon rules and principles governing relations between the members of the international community. It is claimed that the future of the world community has been vitally affected by the October Revolution, the appearance of the Soviet state, and the impact of Soviet diplomatic practice upon the principles of international law. The October Revolution set a new course for the future development of the international community, and Soviet international law is a reflection of legal order which controls international relations during that process.

The global importance of the October Revolution can hardly be exaggerated. It indeed affected profoundly the course of events during the following half century of world history. The Revolution created an enormous totalitarian state, indeed the first such state in modern times, headed by a regime with a monopoly of power; a state that with an illiterate peasant mass, built a modern industrial society and a first rate military power, powerful on land, air, sea and in space, the predominant power in both Europe and Asia.

The October Revolution had two aspects. One aspect was purely Russian expressed in the form and the process of the revolution. It was the result of a number of conditions, viz., the character of the regime which the Revolution removed, the Russian involvement in the war, the nature of the Russian society in which the power structure was totally estranged from the masses, by its feudal outlook, and its lack of foresight.

The other aspect was indeed international in every sense of the word, as the new regime tied the development of Russia to the wheels of industry.

This other aspect of the October Revolution, although a part of the Marxist creed was not of Soviet invention. Industrialization was the force which created modern societies and Marx praised it in the Communist Manifesto. Moreover, before Marx, Condorcet, Saint Simon and many others were fully aware of the forces released by capitalism and industrialization. The mechanics of social change, and its impact on the social and legal institutions were studied and analyzed by a long line of economists, philosophers, and learned jurists quite independently of the Marxist thought. The Revolution committed Russia to the program of industrialization and of social change in order to create a society, very much like the industrialized Western societies.

V. SOCIAL PROGRESS AND THE LAW

The Soviet policy for the reconstruction of Russia both economically and socially was predetermined by a number of allegedly scientific doctrines. Preeminent in this set of doctrines were two theories:

(1) that industrialization, which will create abundance of goods and services will lead in the first stage to socialism, and in the second to communism;

(2) that communism will bring about a social organization which would live without the state and legal order.

It is unnecessary to discuss fully these doctrines within the compass of this study. However, to understand Soviet doctrines of international law it is important to analyze briefly the relationship between the legal order and social change, and in this connection the claim as to the uniqueness of the Soviet experiment.

Gradual development of modern societies has had an important impact upon the legal systems of countries involved in the process of social and economic change. The first phase of economic expansion and emergence of the national markets tended to promote the unification of legal systems. In Europe the civil codes and the reception of the Roman law was the first such result. In the Anglo-Saxon tradition, the common law countries legal order was adapted to the needs of the mercantile society. In due course, industrialization and social change created conditions which could not be left to the free interplay of various social and economic forces but called for the intervention of the state. Public authority was called upon to intervene and to regulate certain aspects of the social and economic processes. The increasing urbanization and standardization of life produced the phenomenon of the masses, the latter being characterized by the similarity of occupation and conditions of existence. In the new conditions, the emergent classes and social groups began to exercise influence upon the economic and social conditions of their countries.

In order to meet the needs of the industrial era, a new branch of legal regulation came into being—administrative law was born in order to determine the exercise of power by public authority. Its purpose was to assure the rule of law the realization of social and economic goals of the state and to supplement private economic initiative which would not venture into the areas of economic or social activity where results of enterprise could not be measured in terms of profit.

As the industrial society developed, so the law developed, becoming increasingly more technical and sophisticated. Market forces were increasingly controlled by the state in order to avoid economic crises, and spontaneous development was replaced by planned actions in which the public authority multiplied the means for slowing or accelerating the rate of economic growth.

As the industrial revolution spread beyond the confines of the industrialized countries on both sides of the Atlantic, the same process was repeated

wherever the modern industry developed. Various codes of civil and criminal, procedural and substantive, administrative and of maritime law, laws regulating social security, public education, organization of administrative machinery, motor transport, imports and exports, banking and securities were if necessary imported and transplanted in new soil which was the arena of industrialization and modernization. The Arab countries of the Middle East, and of North Africa, the emancipated colonial possessions of Britain, France and Belgium, all have in one or another measure combined industrialization with legal reform.

The same process took place earlier in Central, Eastern and South-eastern Europe. Turkey and India were partly affected by this process during the concluding decades of the nineteenth century. Japan is a good example of the success of the drive for the modernization of social, economic and legal institutions.

The essential aspect of these developments is that the rule of law in the free societies in spite of the shift of emphasis from the private into public law area has not lost sight of the human reality, in both its collective and individual dimensions. That this was so was the result of the work of the courts and administrative tribunals, which had expanded their control over the growing areas of administrative action. The rights of individuals have received protection in a new form, and the rule of law and judicial control were extended into the field of social management relations with the public authority as the social agent.

VI. LAW AND SOCIAL RECONSTRUCTION IN THE SOVIET UNION

The Soviet state with its program of social and economic reconstruction launched on its ambitious course to become the most advanced social organism in the world and a model for the rest of the human race was burdened with a conviction that the state and law were the institutions of the society of the exploiters. In due course both state and law were reprieved from immediate demise, and assigned a temporary role in the process of socialist reconstruction.

After the initial period of War Communism the Soviet regime became aware of the necessity of having a legal system for the organization of economic life and for the assurance of orderly transactions of business and for the protection of rights, as they were recognized in the Soviet system of property relations. Codes criminal and civil, procedural and substantive, family codes, a system of social insurance, and labor codes were introduced. The procuratura, a typically Russian institution, combining in its duties prosecution of crimes, protection of the fiscal interests of the state and a general supervision of legality was established. A system of courts was also created. The Codes were supplemented by the flow of legislation enacted

by the government and leading social organizations, which touched upon every aspect of Soviet public life.

Soviet laws were far from models of orderly legislative technique and were moreover not attuned to the needs of the Soviet citizens and of the population. The early legislation could hardly claim to be the result of the modern experience and of learned juristic thought. In terms of the basic purposes of the Soviet public order, however, i.e., social reconstruction through industrialization and modernization of the Russian economy, the Soviet laws left little to be desired. Soviet laws took full account of the situation created by the total nationalization of the means of production, and of the state monopoly of economic initiatives. As the real participants in the economic life of the country were government corporations and governmental economic institutions, Soviet economic law, the civil law of the Soviet Union became a legal order controlling the functions of the bureaucratic institutions. On this level it functioned adequately. The law of the economic bureaucracy, equipped with a system of competent courts assured the flow of investment capital, and continued execution of economic plans.

During fifty years of its existence, the Soviet state has developed a system of laws for the operation of its economic mechanism. It includes a law of contracts controlling the circulation of goods and investment capital, resolution of conflicts arising within the system, an efficient management of labor and a resolution of conflicts arising from foreign trade operations. From the most general point of view, however both the entire system, and its individual institutions are not of Soviet invention. They are clearly borrowed from the legal systems of the other industrial countries.

It is said at times that formal similarity of the rules and legal principles as well as of the legal institutions of Soviet and capitalist laws is not important for the determination of the social function of Soviet legal institutions. Similarities must be disregarded in order to perceive the purpose of the rule of law in the Soviet Union, which is the creation of the communist social order, while in the open societies the purpose of the law is to serve the exploiting class.

It is submitted, however, that in fact these differences exist in theory rather than in reality. Soviet legal theory is conceived as resting upon the significance of property relations. And yet, property and ownership, owing to the organization of the production processes in modern industrial society, are no longer important in determining the nature of social order. Once the issue of ownership of the means of production is overlooked the teleological differences are reduced to less formidable proportions. In final analysis, owing to the emergence of great corporations and of the centralized economic institutions personal ownership of the means of production was reduced to ownership of stock and bonds, which do not give the stockholders control of the productive processes, which increasingly acquire the character of services. The difference between the two systems is lodged not so much in property relations, as in the relationship between production and human

needs. It is further submitted that in this respect Soviet and socialist law still have much to gain from the consideration and absorption of the laws of open societies.

VII. SOVIET LEGAL DOCTRINES AND WORLD COMMUNITY

The state of Soviet municipal law suggests that despite the technical standards attained in the Soviet economy the development of the Soviet society has not kept abreast with the state of Soviet industry. Equipped with an imposing industrial mechanism, the Soviet Union still lives in accordance with the priorities of a preindustrial society. This, in final analysis, determines the condition of life of the masses in the Soviet Union, the status of the Soviet man and moreover affects the status of the Soviet Union in the international community.

The rule of law has one main function, to which all other aspects of the social order may be reduced, i.e., the role of an integrating agent. Seen in this light Soviet international law is not that of a fully integrating agent contributing to the rule of law in the world community. The Soviet Union is a member of the international community in some respects. In other respects it stands opposed to the principles of international legal order.

The traditional rules of international law, permit the Soviet Union to function as a member of a social order which provides a minimum of formal regulation for the functioning of the international community in this day and age, at the present level of technological development. The allegedly new rules and the postulates advanced by the Soviet Union promoting national sovereignty are designed to prevent the emergence of the new ties between the members of the world community, which are to replace the legal and social order which existed before the emancipation of the new nations took place. The Soviet position weakens the integrating influence of the United Nations.

The world community in which old ties binding nations and countries together have disappeared, and in which the action of one great power obstructs and prevents the emergence of the new ties adequate for the present structure of the community of nations is in reality an ideal environment for power politics and empire building. Thus, in final, analysis, with the rule of international law reduced in scope and force, the only practical pattern for world public order is the balance of power system, characterized by bloc alliances, spheres of influence, and, using Soviet terminology, systems of states.

And yet the overall effect of Soviet doctrines on the organization of the modern community of nations is not as general as Soviet jurists and diplomats would like the general public to believe. It is true that the Soviet Union and other socialist states rule out the application of arbitration and compulsory

adjudication for the resolution of disputes in relations with other countries. This does not, however, prevent arbitration and compulsory jurisdiction obtaining adherents in other parts of the international community. Neither does it seem that Soviet efforts to limit the role of international organizations has gained much popularity among the smaller members of the world community, including the newly emancipated nations. The economic condition of the smaller nations, desire of assistance in education, organization of services, defense, health, etc., dictate cooperation with the great international organizations, whether world wide or regional, which make it possible for them to formulate their needs and provide a platform for their diplomatic activity. Weaker, and particularly newly emancipated nations seek firmer standards of control of markets, prices of raw materials, and the flow of capital to their countries. The role of the international organizations in the free world was never more varied. Unless relations between great powers radically change, it is unrealistic to anticipate a halt in the growth and importance of international organizations.

The influence of the Soviet Union at the present time emphasizes the fact that the effect of the rule of law in the international community varies in different environments. Within a loose regime of the world community regionally stricter rules of law prevail. The Socialist Commonwealth of Nations is ruled according to standards which seem to have little in common with those prevailing outside it. Outside the Commonwealth, legal rules which are a part of international law will have different effect depending upon the environment where they are relied upon. In relations between some states their force will be considerable. In relations between other states their force will be minimal or nonexistent. It is enough to recall institutions such as arbitration or judicial process, diplomatic privileges and the status of aliens, legal protection of minority groups and human rights, basic rights of states, territorial integrity, nonintervention in domestic affairs, in order to realize that each of these categories of rules will have a different effect depending upon the social environment in which it is invoked.

This situation is not exclusively characteristic of the international legal system. It is also true of the other fields of legal regulation. There are cities with streets that are safer than streets in other cities, and there are social environments where a word of the party to a contract is a firmer guarantee of performance than elsewhere. The Soviet participation in the enforcement of the rule of international law is not always the same. Sometimes, e.g., in international economic relations, the Soviet performance is of high quality. As regards the protection of Soviet security, the Soviet government will use naked force in order to protect its defense interests even interfering with the freedom of sea or air. Foreign diplomats in the Soviet Union fare better than foreign diplomats in China, though the Soviet treatment of diplomats is sometimes contrary to rules of accepted standards of diplomacy. Foreign ships in Soviet ports are treated with courtesy according to the law. Soviet ships in China are exposed to humiliations which are patently con-

trary to law. Small states on Soviet borders are not in the same legal position as small states in other parts of Europe.

Where is the arcanum of the Soviet sense of legality? It seems to be lodged in the need for reciprocal benefits received from respect to the legal rule. At times Soviet respect for the rights of the other party (property rights of foreign traders) is exemplary. Sometimes it is far below par. In the first case Soviet performance is conditioned by the desire for reciprocity. In the second case, reciprocity is not an adequate reward for conforming to the rule of law. In such cases the Soviet government feels that protection of Soviet interests by whatever means at its disposal might be the more efficient method. In the perspective of the five decades of the existence of the Soviet order it is obvious that the Soviet regime has traveled a long way towards a greater respect of the rule of law. At times—during the period of Soviet-Nazi coöperation for example—the setback was so drastic and Soviet conduct so brutal, that all hope of the Soviet Union's ever embracing methods of civilized diplomacy seemed totally gone. Soviet actions in Hungary (1956) and Czechoslovakia (1968) raised serious questions as to Soviet ability ever to accept fully the rule of law with all its restraints upon the use of force. Nevertheless, there are forces which work towards this end. One is technological progress which inexorably brings nations closer together. The other is the imponderable force of succeeding generations which offers hope, however, distant, that Stalin's disciples may one day be replaced by men of a different stamp.

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